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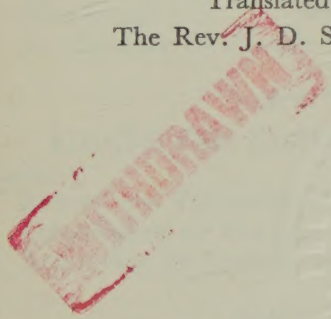
PASTORS AND PEOPLE

A SUMMARY OF THE CANON LAW
AFFECTING PARISH PRIESTS,
CURATES AND THE LAITY

By
The Very Rev. CANON MAGNIN

Translated by
The Rev. J. D. SCANLAN



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INTRODUCTION

THERE is an essential difference between clergy and laity which we shall prove in the course of this book; but from one point of view—namely, that of teaching—a part of the clergy are more akin to the ordinary faithful than to the higher ranks of the hierarchy.

The Pope and the bishops alone are true teachers and masters of doctrine (Canon 1326); the rest of the clergy, together with the laity, constitute the *ecclesia discens:* the latter may undoubtedly concur very effectively in the spread of doctrine, but they possess no official teaching authority. Hence two chief classes of persons may be distinguished in Canon Law—the *ecclesia docens* (i.e., the teaching Church) and the *ecclesia discens* (i.e., the taught Church). In this volume we shall confine ourselves to the latter, since two other volumes in this series deal with the Pope and the bishops. We think it best to combine with the bishops their assistants in general diocesan administration, vicars-general, other members of the episcopal curia, canons of the cathedral church, etc., and these we shall therefore omit. We shall pay more attention to the clergy than to the laity, not because we imagine that their part in the life of the Church is trifling and negligible, but because the Code of Canon Law devotes only a few canons to them, doubtless considering that their position, from the point of view of ecclesiastical law, demands very much less attention than that of the clergy because it is less specialized. Nor shall we deal with religious since, to avoid being too

sketchy, a whole volume would be necessary for them alone.

Our work is essentially an exposition of, and brief commentary on, the new Code of Canon Law, drawn up with the collaboration of the universal Church since 1904, promulgated by Benedict XV on 27th May, 1917, and which came into force on 19th May, 1918. It must, however, be noted that this Code does not represent the entire discipline of the Catholic Church; for completeness, account must be taken of the different Eastern churches in communion with Rome, since the Code of 1917 applies only to the Latin Church (Canon 1), of liturgical laws, of vested rights and privileges belonging to individuals and groups (national or less representative) and finally of custom (Canons 2-5). This very diversity is proof of the flexibility of the Canon Law which adapts the unchanging principles of Christianity to the various conditions of place, time and person. We shall indicate from time to time the definitions and modifications which the laws of the Eastern Church and the different particular laws of the Latin Church have produced in the common law of the Code.

On 15th September, 1917, Benedict XV instituted a Commission of Cardinals, charged exclusively with the interpretation of the Code; this Commission has already published a large number of decisions, to which we shall have occasion to refer.

In the course of our treatment we shall give historical notes on the canonical institutions which we are studying, thereby acting in conformity with the Decree of 7th August, 1917, by the Roman Congregation for Seminaries and Universities, which instructs professors of Canon Law to deal with the history of each legal topic under discussion. In point of fact it is impossible to get a proper grasp of a law if it is separated from the development—in some cases a lengthy process—of which it is

invariably the outcome. Moreover the best method of securing complete confidence in the decisions of authority is to recognize therein the echo of age-long experience; and what is true of every branch of law is doubly true when applied to the system of a church whose every activity is deep-rooted in tradition.

PART I

GENERAL PRINCIPLES

CHAPTER I

PERSONALITY IN CANON LAW

Acquisition of personality—Causes determining or modifying personal status—Moral persons—Acts of persons

THE legal position of the members of the *ecclesia discens* is not left to the mere will of ecclesiastical superiors. Every layman and cleric has a canonical status, which, although it imposes duties, at the same time confers upon him rights even in relation to authority. This status is, in the first instance, determined by general principles, no account being taken of the rules peculiar to each clerical state—religious or lay. The new Code of Canon Law has, for the first time, collected these principles at the beginning of the second book which deals with persons.

Canons 87-107 treat of the following matters:

(1) The acquisition of canonical personality by Baptism;
(2) Various causes determining or modifying personal status;
(3) Moral persons;
(4) Acts of persons.

(1) *The acquisition of personality*

By baptism a man is constituted a person in the Church of Christ with all the rights and duties pertain-

ing to a Christian, unless with regard to the said rights there is some obstacle in the way of ecclesiastical communion, or a censure imposed by the Church (Canon 87).

From this definition of canonical personality it follows that only the baptized are subject to ecclesiastical laws, at least, in so far as these laws are merely human precepts and do not propose for our obedience divine law, whether natural or positive and revealed. All unbelievers, Jews, pagans or unbaptized people without any religion are outside the Church, which, as such, claims no power over them. This principle is revealed by St. Paul. In his first Epistle to the Corinthians he had to decide the case of an incestuous man who was cohabiting with his father's wife. In a previous letter—now no longer extant—he had forbidden the Corinthians to maintain any relations with adulterers and fornicators. They replied that such an ostracism would force them to eschew everyone in the city of Venus Pandemos, to which the Apostle rejoined that the prohibition applied only to members of the Church and not to outsiders, that is to say, Jews and Gentiles (this interpretation is derived from a comparison of Colossians iv, 5; I Thessalonians iv, 11; I Timothy iii, 7, where it is a question of the good example to be given to "them that are without," and of the good repute to be thereby acquired for the honour of the Christian name. Among the Jews the "outsiders" —the hitzonim—were the pagans or Gentiles). St. Paul concludes as follows: "For what have I to do to judge them that are without? Do not you judge them that are within? For them that are without God will judge (i.e., in virtue of the natural law). Put away the evil one from among yourselves." That is to say, treat the incestuous man as excommunicated because he is one of our own and not one of those outside over whom we have no jurisdiction (I Cor. v, 12).

From this we get the Canon Law maxim "Ecclesia de his qui foris sunt non judicat"—the Church exercises no jurisdiction over those who are not within her fold.

The Council of Trent dealt with the question solemnly in Session XIV, Chapter II, where it enumerates the differences between the sacraments of penance and baptism, and teaches that the minister of penance is a judge, which is not the case in baptism because: "the Church exercises judgment on no one who has not entered therein through the gate of baptism. For, what have I, saith the Apostle, to do to judge them that are without?"

Benedict XIV develops the same principle in his Constitution "Singulari Nobis" of 9th February, 1749 (paragraph 8).

The second conclusion to be drawn from Canon 87, as the counterpart of the first, is that all baptized persons are subject to the laws of the Church, even if they have received non-Catholic baptism or have been baptized at too early an age to be capable of binding themselves personally. This last is a truth of Catholic faith defined by the Council of Trent:

"If any one saith that the baptized are by baptism itself made debtors but to faith alone and not to the observance of the whole law of Christ, let him be anathema (Sess. VII, Canon VII).

"If any one saith that the baptized are free from all the precepts, whether written or transmitted, of Holy Church, in such wise that they are not bound to observe them, unless they have chosen of their own accord to submit themselves thereunto, let him be anathema (Sess. VII, Canon VIII).

"If any one saith that those who have been thus baptized when children are, when they have grown up, to be asked whether they will ratify what their sponsors promised in their names when they were

baptized; and that, in case they answer that they will not, they are to be left to their own will; and are not to be compelled meanwhile to a Christian life by any other penalty, save that they be excluded from the participation of the Eucharist, and of the other sacraments until they repent; let him be anathema" (Sess. VII, Canon XIV).

Hence, even if it is received before the age of reason, baptism, of itself, entails observance of all the laws of the Church. If this is a source of scandal to anyone it may be pointed out that the mere fact of birth imposes on men obligations towards their country which may extend to the sacrifice of their lives, and that, in addition, a man does not select the family into which he is born with its corresponding duties and obligations.

Benedict XIV goes so far as to include under the authority of the Church all children below the age of seven who have been baptized against the wishes of their parents if the latter are not Christians, that is to say, in a manner which is absolutely unlawful and counter to all the prescriptions of Canon Law (Letter "Postremo Mense" of 28th February, 1747); but Monsignor Ruch, who has made a prolonged study of Benedict XIV's doctrine on the baptism of infidels,* notes that this doctrine was taught by a Pope who had in mind the Papal States of the eighteenth century, and that "the rules given by him thereanent may not accordingly be suited to all times and places."

It might be alleged that the Council of Trent makes no mention of baptism received outside of the Church; but the principle enunciated by the Council that baptism, of itself, subjects a man to the laws of the Church applies to every valid baptism; and since it is a general principle, theologians and canonists have since then always understood it in this sense, at the same

*Dictionnaire de Théologie catholique (Vacant): article "Baptême des infidèles d'après Benoît XIV, Vol. ii columns 341-355.

time noting that the Council uses the term "baptized persons" without any addition and makes no distinction at all between baptism received in the Church and baptism received outside. This is the reason why heretics and schismatics come under the laws of the Church—apart from explicit exceptions in their favour—but it must immediately be added that Canon Law, taking into account the good faith of many non-Catholics brought up outside the Church in a religion long since established, tends to multiply these exceptions in proportion as differences of religion continue. The Council of Trent, for example, by the decree "Tametsi" obliged all non-Catholic Christians, under pain of nullity, to contract their marriages before a parish-priest under the same conditions as Catholics (i.e., in those parishes where the decree was promulgated); whereas the decree "Ne Temere," which came into force on 19th April, 1908, exempted from this law, no matter where the marriage took place, all those who were outside the Catholic Church but had not themselves left it (cf. Canon 1099 of the Code).

Similarly, before the new Code came into operation (19th May, 1918), while the impediment known as disparity of cult prohibited all *Christians* from marrying unbaptized persons (and vice versa), since that date this impediment affects only marriages between *Catholics* and unbaptized persons (Canon 1070). It must, however, be distinctly understood that such exceptions are not presumed; the law must clearly indicate their existence by specifying, e.g., that a given impediment applies to *Catholics* (and not in a general way to baptized persons) as in the case of disparity of cult already mentioned. This is why matrimonial impediments (other than disparity of cult) have the force of law even for the marriages of schismatics or Protestants among themselves. Benedict XIV in his Constitution "Singu-

lari Nobis" of 9th February, 1749, points out that these impediments existed before the Protestant secession, and that Protestants cannot benefit by their separation to the extent of being exempt from the said impediments; he adds that the Congregation of the Council has declared that the marriages of heretics were null on the ground of one or other of these impediments, and that in the case of conversion a dispensation is granted if the circumstances warrant it. The sole exception created by the new Code of Canon Law in this matter is that of disparity of cult, and it affirms the Church's right to create matrimonial impediments applicable to baptized persons and not solely to Catholics (Canon 1038).

There may exist merely incomplete canonical personality which entails all the duties but not all the rights of membership of the Church, a juridical position which is reminiscent of the "*capitis deminutio*" of Roman Law. This is the result either of an obstacle which prevents the bond of ecclesiastical communion from being formed or persisting, or from a censure. The first case is that of an adult who is knowingly baptized in heresy and adheres to it; he does not receive the grace of interior regeneration, and is deprived of ecclesiastical communion which implies that one is united with the other members of the faithful in the same faith, shares in the same sacraments and is subject to the same superiors, above all to the Sovereign Pontiff—the centre of unity. Obviously infants themselves cannot, by their interior dispositions, set up this obstacle; hence it is said that they are always baptized into the faith of the true Church, even if their baptism is non-Catholic.

A censure is a canonical penalty which, in the case of contumacy, deprives the delinquent of certain spiritual benefits which, in the Church, belong to all, or to a particular class of, the faithful (Canon 2241). These benefits are restored immediately the censure ceases.

(2) *Causes which determine or modify personal status*

AGE

In all legal systems, age affects legal capacity, but until the appearance of the new Code of Canon Law the Church had not promulgated laws determining the limits of the different periods of infancy, puberty and majority. In this matter Canonists had for long drawn on Roman Law as a subsidiary source of the Canon Law, agreeing with it, e.g., in putting majority at twenty-five; but Roman Law has long since fallen into desuetude. Was it then necessary to fall back on the different systems of modern states? Some canonists like d'Annibale were of that opinion. This solution was unsatisfactory because contemporary systems of law disagree on the question of age; thus majority which is attained at twenty-one in Great Britain, France, Italy and Portugal is postponed to twenty-three in Spain and even to twenty-six in Chili and Nicaragua. To remedy this discrepancy the Code of Canon Law has laid down rules relating to age, peculiar to ecclesiastical legislation and at the same time conforming to what is most common in the different civil systems.

Majority is fixed at twenty-one years complete (Canon 88 §1). A major enjoys the full exercise of his rights (Canon 89). He can e.g., be admitted to simple perpetual religious profession, (Canon 573), be ordained subdeacon (Canon 975), which implies definite consecration to the ecclesiastical state; but there are certain obligations annexed to the acquisition of complete rights, e.g., that of fasting on the prescribed days. On the other hand a minor does not possess full legal capacity especially in the matter of criminal responsibility (Canon 2204). Nevertheless he is not (at least as soon as he has ceased to be an infant and especially after attaining the age of puberty) a purely passive being from the legal

point of view: after completing his seventh year he can acquire a personal quasi-domicile in addition to his family domicile (Canon 93 §2); unreasonable opposition on the part of his parents cannot prevent him from marrying (Canon 1034); and if, in theory, he cannot institute or defend proceedings before tribunals without the assistance of his parents or his tutor or curator as the case may be, in matters spiritual or connected therewith, it is lawful for him, after attaining the age of fourteen, to do so through the tutor or curator designated by the Ordinary as soon as he has acquired the use of reason (Canon 1648).

The age of puberty in the case of males is held to be fourteen years complete and in the case of females twelve years complete (Canon 88 §2). This is a legal presumption which has no reference to fact and which has not always been admitted in Canon Law. Puberty indicates an increase in responsibility, since it is only after puberty has been attained that penalties *latae sententiae* may be incurred (Canon 2230)—i.e., penalties which affect the delinquent by the very fact of his having infringed the law. Certain acts, however, can be done only on the lapse of a certain time after puberty, although they may be done before majority: entrance to novitiate at fifteen (Canon 555), temporary monastic profession on completion of the sixteenth year (Canon 573), marriage for men on completion of the sixteenth year, for women on completion of the fourteenth year (Canon 1067), personal appearance in court for causes spiritual or connected therewith at fourteen years complete (Canon 1648 §3).

Infancy lasts until the completion of the seventh year, before which age a child is not considered responsible for its acts. On the other hand, after completion of the seventh year, the use of reason is presumed (Canon 88 §3). An example will make this distinction clear: if a

child under seven is presented by its parents to the parish priest as a candidate for First Communion in private, the parish priest, who is bound not to admit to the Holy Table anyone who has not the use of reason (Canon 854 §5), can and must insist on the parents' proving that the child has reached the age of reason, since there is a legal presumption against it. If it were a question of a child over seven, the contrary presumption would come into operation, and a parish priest who considered that the child had not the use of reason would, if he opposed the parents' wishes, be forced to prove his contention. Confirmation is administered in the Latin Church about the age of seven, and even earlier in case of danger of death, or if the minister considers that there are just and grave reasons for administering it before that age (Canon 788). The obligation of confession is imposed immediately the age of discretion is reached, which is the same as the age of reason (Canon 906); the obligation of receiving Holy Communion exists in case of danger of death, as soon as the child is able to distinguish the body of Christ from ordinary bread and to adore it reverently; apart from danger of death, reception of the Holy Eucharist is lawful (and obligatory) only if the child knows the truths which are indispensably necessary for salvation, and has that degree of devotion to the Blessed Sacrament which is appropriate to its years (Canon 854 § 3)—a requirement which presupposes the use of reason.

Extreme Unction can be administered only to sick people who have probably the use of reason (Canons 940, 941). It is worth noting that in the question of the Sacraments ecclesiastical legislation takes into account the fact that the use of reason has been attained whether before or after the age of seven; hence children have a perfect right to receive the sacraments if the condition is realized. On the other hand, the ordinary rule

of law with regard to observance of such commandments of the Church as have no connexion with the sacraments specifies the same age, viz., seven years complete.

Those who are habitually deprived of the use of reason are assimilated to infants (Canon 88 §3). They are accordingly presumed to be incapable of committing crime even if they have lucid intervals (Canon 2201 §2), a presumption which is so strong as to admit of no proof to the contrary. If it is a question of claiming a right in favour of a lunatic and of showing, e.g., that he acquired the right during a lucid interval, then proof of this remains competent. Perpetual lunatics are entitled to baptism, and in danger of death, to penance and holy communion even if they do not possess the faintest glimmering of reason.

Sex

Women are excluded from the hierarchy of order and jurisdiction, a principle nowadays admitted without challenge, whatever may be said of former doubts as to practice or doctrine. (It seems to be the case that the abbesses of Fontevrault were allowed to exercise true jurisdiction, and in certain ancient ritual books the ordination of deaconesses bears a striking resemblance to the ordination of deacons.) Moreover the frailty of sex diminishes responsibility on the part of women (Canon 2218).

Origin

This is a notion peculiar to Canon Law, which is the result of a faulty interpretation of Roman Law and has evolved considerably since entering into the law of the Church. It has a certain importance with regard to ordination, since, in addition to domicile, it decides to which bishop a man is attached for the purpose of receiving orders; further, domicile alone, without origin,

can under certain conditions similarly make a man the subject of a bishop with regard to orders. In the case of legitimate children their place of origin is that place where their father had his domicile, or in default of domicile, his quasi-domicile at the time of their birth. Since the Code, this provision applies also to neophytes (the newly baptized) who formerly had for their place of origin the locus of their baptism. The place of origin for illegitimate or post-humous children is that of the domicile, or, in default of domicile, the quasi domicile, of their mother. If the parents have neither a domicile nor a quasi-domicile (they are then termed *vagi*) the place of origin is that of birth; in the case of foundlings their place of origin is the place where they have been found (Canon 90 §2).

Domicile

In Canon Law, domicile has more numerous and important consequences than origin. The Code devotes to this subject Canons 91-95 in which it deals with the acquisition of domicile and quasi-domicile, be it ordinary or legal; with the chief legal effect of such acquisition which is to place one under the authority of a definite parish-priest and bishop, and finally with the loss of domicile and quasi-domicile.

The canonical theory is borrowed from Roman Law, but in its last stage of development it has come nearer to the ideas of modern civil law. To Roman Law it owes the distinguishing of two elements—the one material, the other psychological, a fact and an intention which canonists compare to the body and soul—*corpus et animus*. The fact is that of residence in a certain place, of being installed and possessing personal property therein, whether such property is owned or merely borrowed; the term place includes not only parish but also diocese. This is a specification introduced by the

Code, which puts an end to the long controversies on the possibility of existence of a diocesan domicile analogous to the provincial domicile of the Roman Law (Canon 92). It has its importance inasmuch as a man may have the intention of never leaving a particular town or county and at the same time of frequently changing his residence therein. The intention is that of staying forever in the place where one has fixed one's residence. Such intention is not, however, a vow of stability, and remains subject to the possibility of a change brought about by circumstances; hence, the law lays down that the fact of residence must be united with the intention of staying forever in the place chosen, if nothing takes one away from it (Canon 92 §1). If, however, the prospect of a change is compatible with the intention of staying in a place forever, actual knowledge of such a change renders such intention impossible (cf. P. Foumeret: Du domicile matrimonial, p. 138). Perpetual residence does not imply continuity; one may have the intention and at the same time make up one's mind to travel every year and often in the year on pleasure or business. Immediately the two elements of fact and intention are united domicile is acquired; it is not necessary that residence should be combined with a conveyance, lease, or transfer of one's goods, etc. In Canon Law, as in Roman Law, several domiciles can be acquired at the same time. Until the Code of 1918 this was the canonical theory of domicile in its essential features—a theory which was a fairly close imitation of Roman Law. But the law of the various modern states in respect of domicile makes the fact prevail over the intention, a situation which has influenced ecclesiastical legislation and upset the nice balance of the two constituent elements in our canonical notion of domicile. In fact, after reproducing the definition which we have just given, and declaring that residence must be combined with the intention of

staying, the Code immediately adds that the intention may be replaced by a stay of ten years completed (Canon 92 §1). This is quite a characteristic modification of the former law by assimilating it to the civil law. It follows, therefore, that ten years actual residence alone creates domicile and does not merely found a presumption of the intention to stay. In the course of the ten years a man may have left the place deliberately, explicitly and openly; if he has, in fact, remained, domicile is acquired simply and solely because the ten years have expired. It is not necessary that the stay be continuous, provided that after absence on business or pleasure a man always returns to the same locality as being the place of his ordinary dwelling and, in short, his home. Quasi-domicile is a notion peculiar to Canon Law whose theory was not worked out till long after the theory of domicile, and a decree of the Holy Office (7th June, 1867) had to appear before it possessed the force of law.

Recourse has had to be made to quasi-domicile because of the facility and custom of moving from one place to another which modern civilization has introduced. Insistence on true domicile in every case for the purpose of attaching the faithful to a parish or even to a diocese made such a connexion impossible for a considerable number of people—indeed, even for the majority—in the large towns. Hence the necessity of finding a legal situation half-way between the complete instability of the "wanderers" or *vagi* who never stay for more than a few weeks, at most, in any given place and the attachment which definitely binds individuals and families to the same native place. This is the position of that semi-fixed population which has for its domicile merely a so-called domicile, which has in other words a quasi-domicile. It is defined canonically by substituting in the theory of domicile acquired by perpetual residence, residence for the greater part of a year. Quasi-domicile

is thus acquired either by combining the fact of being installed with the intention of staying for the major portion of the year (and that from the very moment when this combination is effected) or simply by actual prolongation of residence for the greater part of the year. This latter case is an innovation introduced by the Code under the influence of civil law, and forms a parallel to the change indicated earlier on when we were discussing the subject of domicile.

While domicile and quasi-domicile are acquired immediately the intention to stay co-exists simultaneously with installation, they come into being only when these two elements are united; consequently, if a person stays in a place without the intention of remaining there forever or for six months he will acquire a domicile or quasi-domicile in that place only at a later date. So far we have mentioned only ordinary domicile or quasi-domicile which is called "voluntary," since it partakes of the nature of a voluntary act. There is another kind of domicile which is called "necessary," as being imposed by law, and which is termed legal domicile. It is not created by residence nor by intention to reside, since it can exist apart from one or other of these elements. A married woman retains willy-nilly her husband's domicile so long as they are not legally separated. She acquires her husband's domicile as soon as she is married, and even before being installed in the new home (Canon 93 §1), but like a minor over seven, she can have a personal quasi-domicile. After obtaining a legal separation (declared by a judge or brought about on her own initiative for certain just causes), she can create a separate domicile for herself.

A lunatic has, at law, the domicile of his curator, a minor that of the parent or tutor under whose power he may be (Canon 93 §1). The tutor in question may even be the tutor at law of such children. A minor's legal

domicile may continue after his majority; it is not lost by the mere fact that, as far as he is concerned, he has abandoned every intention of returning. If it is a question of his father's home, his natural resort in case of distress or illness, for his domicile there to cease there would have to be a violent rupture expressed in some very explicit way which would not be adequately proved by the mere acquisition of another domicile.

A minor, as soon as he has emerged from infancy, i.e., immediately the age of seven is completed, can voluntarily create a quasi-domicile for himself (Canon 93 §2) but, before attaining majority, he cannot possess a true domicile distinct from his legal domicile. In this respect Canon Law gives him legal capacity, which is restricted indeed, since he can act on his own behalf only in what concerns his quasi-domicile.

Canon Law has provided for the case in which there is neither an ordinary or legal domicile nor a quasi-domicile. This is in the case of *vagi* (wanderers) who have no intention of staying anywhere even for the greater part of a year. The civil law of France assumes, on the contrary, that everyone has a domicile, a theory which occasionally involves some strange legal subtleties. On this point the fidelity of ecclesiastical law to the Roman tradition is more suited to the nature of things.

The legal effects of a more or less protracted stay in a particular place indicate its importance from the canonical point of view. Habitation is, in short, the normal criterion for entry into the units of ecclesiastical life—the parish and diocese. A person's parish priest and bishop are the parish priest and bishop of the place where he has a domicile or quasi-domicile (Canon 94 §1). Since a person may have several domiciles or quasi-domiciles he may have several parish priests and bishops. He depends on these pastors for reception of the sacraments. Such dependence is obligatory in the case of

baptism, confirmation, marriage, orders and extreme unction, and for orders domicile alone is taken into account to the exclusion of quasi-domicile. In the present discipline, however, no one is obliged to go to his own parish priest for penance and Holy Communion even to fulfil the Easter precept; on this point the discipline of the Fourth Lateran Council (1215) has been completely abandoned so far as the rights of pastors are concerned.

Vagi, or wanderers, and those who have only a diocesan domicile or quasi-domicile have nevertheless a parish priest, viz., the parish priest of the place where they actually are. Similarly *vagi* have for their bishop the bishop of the place where they are actually staying (Canon 94 §§ 1, 2 and 3). Domicile and quasi-domicile are lost in the same way as they are acquired; just as they are created by a combination of residence and intention or else prolonged residence alone, the disappearance of these two elements puts an end to it when their union was necessary to constitute it, and the cessation of residence suppresses it when residence alone is insisted on. In the first hypothesis if it is only the actual installation or the intention which disappears, domicile or quasi-domicile persists; in order that they should be lost departure with no intention of returning is necessary. This loss of domicile or quasi-domicile is not easily presumed, for the legal situation which it suppresses exists until the contrary is clearly proved.

Relationship by Blood or Consanguinity

Canon Law and Civil Law do not reckon this in the same way. The Civil Law keeps to the Roman Law tradition which counts a degree for every generation or additional person in the descending series, the original generation being excluded from the calculation when it was a question of relationship in the collateral or oblique

line. Cousins-german were accordingly related in the fourth degree since four generations were counted—two on each side. From the eighth century the Church adopted the Germanic reckoning of collateral relationship which retained the generations of only one descending series, cousins-german being therefore related in the second degree. If the series are unequal, it is the longer, i.e., the more distant degree of relationship which prevails; take, for example, the case of two people about to be married one of whom is the child of a second-cousin of the other: there are three degrees on the one side and four on the other: the relationship is only of the fourth degree and in the present discipline of the Code does not constitute an impediment to marriage, since the impediment of consanguinity extends only to the third degree (Canon 1076 §2).

Affinity or relationship by marriage has been differently conceived of in the Church at different periods. Roman Law derived affinity from legally valid marriage alone (Digest Law 4, xxxvii, 10) and moreover limited it to the direct line. Under the influence of the Jewish Law, Canon Law extended it to the collateral line. Then a realistic conception prevailed, owing chiefly to St. Augustine, and the words of Scripture "they shall be two in one flesh" were strictly applied, and affinity was derived from carnal commerce alone and all carnal commerce. In 860 the Council of Touzy bears witness that, at that time, in Gaul, illicit affinity was considered an impediment to marriage. At the end of the twelfth century, Bernard of Pavia teaches that no affinity is contracted in the case of a non-consummated marriage.

This state of affairs lasted until the Code which, while retaining collateral affinity, has returned to the Roman Law tradition. According to Canon 97 affinity results solely from valid marriage whether consummated or not: since 19th May, 1918 (when the Code came into

force) it is constituted neither by a "marriage" which is null and void nor by illicit intercourse. Further it exists between only a wife and her husband's relations and vice versa; the affine of an affine is not a relation (e.g., the brother-in-law of a sister-in-law); this has been the case since the fourth Lateran Council of 1215 and is expressed by the Canon Law maxim "affinity does not beget affinity—*affinitas non parit affinitatem.*" This step put an end to the inextricable complications of relationship introduced by the Germanic Law. Affinity is reckoned according to the degrees of the consanguinity which is one of its elements.

Rite

Rite helps to determine personal status since, in canonical language, it specifies not only the formularies and liturgical ceremonies peculiar to a church, but also the special discipline of the particular church, and since the fact of belonging to a particular rite makes a person subject to the hierarchy of that rite. The first canon of the Code contains the most important consequence of the legal effect of rite:

"Although the Code frequently refers to the discipline of the Eastern Church, it is nevertheless concerned solely with the Latin Church and does not bind the Eastern Church except in matters which from the very nature of things affect the Eastern Church as well."

Great diversity of rite has always existed in the Church. During the first four centuries the officiating priests had wide scope, and they made considerable improvisations on the given theme. Subsequently, from the end of the fourth century, official types of prayer withdrawn from private initiative were definitively settled. Thus there came into being two families of rites—the Latin family (which includes the Roman rite which has prevailed in nearly all the Western Churches, the Ambrosian rite at

Milan and the Mozarabic rite at Toledo) and the Eastern family (which comprises the Greek, Syriac, Coptic and Armenian rites, the first three of which are subdivided into other rites).

Just as a man enters the Church in a general way by baptism so also is a person affiliated to the Church of a particular rite by baptism into that rite (Canon 98 §1). There is, however, this exception, viz., if baptism is fraudulently administered by a minister of a different rite; in case of necessity; or by virtue of an indult which exempts one from adhering to the rite of one's baptism. The Code mentions the minister of another rite because everyone has his native rite into which he should normally be baptized. This rite is that of one's parents—the father's rite, if father and mother do not belong to the same rite, the rite of the Catholic parent if they are not both Catholics (Canon 756). If, as already mentioned above, baptism is administered fraudulently, in case of necessity, or by virtue of an indult, the neophyte must be inscribed in the rite into which he should have been baptized according to the ordinary rule. Transfer from one rite to another is strictly forbidden and may take place only with special authority from the Holy See, even if it is a question of the return to one's original rite. Although the Code does not, in this instance, use an irritant clause declaring such a step null and void, it would seem that unauthorized transfer to another rite has no legal effect, since it follows from the nature of things that a man cannot on his own authority make himself the subject of any ecclesiastical superiors, and affiliation to a rite implies subjection to the ministers of that rite. This ruling is a result of the respect which the Church has for the various rites practised in her midst, which are all venerable in their antiquity, and the traditions which they represent. Hence the Code, forbids clerics to induce, by any means whatever, a

Latin to adopt an Eastern rite or an Eastern to adopt the Latin rite (Canon 98 §2). This prohibition is by no means useless. It would be rash to assert that the Eastern clergy have never attempted to capture Latins, and it would be even bolder to claim that Latin missionaries—especially in the East—when their excessive zeal was encouraged by some Western state, e.g., Venice, not to mention our own days—have not exerted pressure on Easterns in order to Latinize them. On occasion, indeed, opposition to the Eastern rites could be very strong even in Rome, as in the time of S.S. Cyril and Methodius (end of ninth century) but, as a general rule, the popes have protected these ancient rites and a prohibition against their abandonment has been the tradition of the Holy See from at least the fifteenth century; Nicholas V (fifteenth century), Pius V (sixteenth century), Urban VIII and Clement IX (seventeenth century), Benedict XIV (eighteenth century) and Leo XIII have one after another sanctioned it and sometimes in very severe terms. The principle of the Curia is that a man's rite must be retained, even in the case where he has practised it in schism and has subsequently been converted, "for," writes Benedict XIV (Constitution "Allatae" 26th July, 1755), "it is a question of making the Easterns Catholics, not Latins (cf. Apostolic Letter "Orientalium" of Leo XIII, 30th November 1894)."

The Code itself does not forbid transfer from one Eastern rite to another, but since the Eastern Church is no more affected by what the Code omits than by what it prescribes, pontifical constitutions and decrees of the Roman Congregations which are opposed to such transfer remain in force ("Allatae" of Benedict XIV, "Orientalium" of Leo XIII, decrees of Propaganda at the beginning of the twentieth century, etc.).

Marriage alone—apart from permission of the Holy See—makes a person free to change his rite, but only in

the case of a wife. Such change is a matter of choice, not of obligation, and the wife is invited to state whether she desires to retain her own rite or adopt her husband's, if it is different; moreover this freedom lasts all during the marriage, and if it is dissolved she can resume her former rite. Such is the general law, but particular law (in practice the law of an Eastern church) may arrange matters differently. A custom—albeit of long standing—of receiving Holy Communion in a rite other than one's own does not entail change of rite (Canon 98 §5). Precision on this point was to some extent more necessary in the present legislation inasmuch as it allows the reception of Holy Communion from a minister of another rite merely for the sake of piety (Canon 866). *A fortiori*, the liberty to hear Mass and receive absolution in another rite (Canons 881 and 1249), involves still less transfer from one rite to another. Hence, apart from the case of a married woman, such a change of rite can be brought about solely by affiliation and inscription in due form.

(3) *Moral Persons*

Canon 99 states that there exist in the Church besides physical persons (i.e., individuals of flesh and blood) legal entities(this does not mean purely fictitious beings) which are termed moral persons. These legal entities owe their existence to the law, are independent of the physical persons who constitute and administer them, and have the power to acquire and exercise rights such as buying, selling and taking legal proceedings.

Their Constitution

The Code declares that moral persons are constituted by the public authority. Here we have the authoritative idea of moral personality conceived of as the creation of

the public power. A dominating conception in the Roman Law and even more so in the law of France, it is at the present day strongly attacked by a whole school of jurists which has included a certain number of Catholics such as Terrat, Vareilles-Sommières and Saleilles, and which asserts that the right to moral personality is a natural right but obviously under certain conditions.

The authoritative conception is more readily grasped in the case of the Church, which is a supernatural society in which all authority comes from above, than in the case of the modern state, which rests more and more upon the will of the people. Moreover, in Canon Law it is not correlative with denial of the natural right of combination. Groups can be formed in the Church before authority endows them with moral personality. Thus Canon 684 encourages the faithful to combine in associations set up, or at least approved by the Church, which clearly assumes that associations approved by ecclesiastical authority can exist before they have been invested with moral personality by such authority. In the Church very few associations can receive spiritual favours without having moral personality, e.g., pious societies which have been approved by the Ordinary, says the Code, are capable of gaining spiritual favours and above all indulgences, although they are not moral persons (Canon 708). Moreover, all the religious orders and all religious congregations are voluntary associations which have been recognized by the Church after their foundation.

Division

Collegiate moral persons are composed of a certain number of physical persons united into one single body or college. The common interest which unites them is distinct from their interests as individuals, and the rights of the moral person are therefore equally distinct

from the rights of each of its members taken singly or even all together. Authority steps in precisely because of this common interest. A cathedral or collegiate chapter is a collegiate moral person like a religious order or confraternity. To these corporations or colleges of Canon Law correspond the associations and corporations of civil law.

Non-collegiate moral persons are composed not of persons but of things and are either institutions or establishments, in themselves the subjects of legal rights, independent of any endowment, e.g., churches, dioceses, parishes, seminaries, universities or foundations, goods appropriated to a special purpose (masses, charitable organizations, etc.)

Legal Status of Moral Persons

The Catholic Church and the Holy See alone are accorded their status by divine right; all other ecclesiastical moral persons take their status from human law or from the decree of a superior. A collegiate moral person must originally be composed of at least three physical persons.

Minors do not have the personal management of their own affairs; this is left to their tutors or curators (Canon 89). But since the latter are liable to be suspected of neglect the law affords a special protection to minors, e.g., "*restitutio in integrum*" or the restoration of affairs to their original state, when it can be shown that a minor has suffered injury from an act which is valid but voidable (Canons 1687 §2; 1688 §2).

Moral persons and minors are in similar case, since their goods are administered by physical persons who are liable to default; hence, legally, they are assimilated to minors. Moreover, the protection which they enjoy has, as its counterpart, a subjection to authority which is more stringent than in the case of private individuals, a

control and measure of freedom which the law determines in each particular case.

Acts of Moral Persons

In the case of collegiate moral persons, decisions and elections are settled by vote. As a general rule the method of scrutiny is determined by the laws peculiar to each category of moral persons—conclave, chapter, order, confraternity, etc. Hence the relevant canon of the Code starts off by saying "provided common or particular law has not otherwise provided." In the case where particular rules have not been given, it makes some general observations, viz.: an absolute majority prevails at the outset; if it is not secured, then a relative majority prevails at the third scrutiny. If after the third scrutiny the voting is equal, the chairman has a casting vote; if he refuses to give his casting vote, and it is a question of election, the senior by ordination, profession or age is held to have been elected (Canon 101 §1.1°). Say a corporation of nine members is electing an office-bearer: at the first and second scrutinies the votes are divided into blocks of four, four and one; no one has secured the necessary majority; at the third scrutiny the candidate who has most votes gets four and is elected by a relative majority, an absolute majority being five votes: if, after two scrutinies, the votes are divided into three blocks of three, the candidate for whom, after the third scrutiny, the chairman gave his casting vote would be elected; if the chairman refused to give his casting vote the oldest candidate would be declared elected. In reckoning the votes invalid votes must be deducted. This general rule has the advantage of limiting the scrutinies to three; when an absolute or even a two-thirds majority is insisted upon (e.g., in papal elections), the number of scrutinies may be much more numerous.

If, however, it is an act binding each individual

member, as such, of the moral person, and entailing a burden or restriction of rights not provided for in the constitution or delegating, by way of compromise, the right of voting to a committee (Canon 172), then unanimity is required. It is the time-honoured legal principle (rule 29 of the Sext), repeated by the Code, that what concerns all and everyone as a private individual must be approved by all. Nevertheless, experience has shown that the application of this rule does not do away with thorny problems.

It is not necessary that all the acts of a collegiate moral person should be done by the corporation as such. As a general rule a physical person designated by law, the statutes of the College or agreement among its members is sufficient for the completion in its name of any acts of ordinary administration and such person is obliged to account to the college for his administration. In such acts done in the name of the moral person the principle holds that moral persons are legally assimilated to minors.

The foregoing dispositions relate to the internal life of corporations and colleges. Canon 105 enunciates the great principle which governs their relations to superiors other than those who belong to their organization (it may be observed that often they have no superior properly so-called directing their collegiate life). Frequently, too, the depositaries of ecclesiastical authority can make a decision only with the consent or advice of a corporate body: thus a bishop is assisted by the cathedral chapter, a religious superior by counsellors variously denominated as assistants, consultors or definitors. If the law requires the consent (consensus) of such moral persons, then any act done without such consent is null and void: if it demands merely advice (consilium) the superior is not bound to follow such advice, although he must carefully weigh any decision arrived at unanimously by his advi-

sers and reject it only for a grave reason of which, however, he remains the judge. The consent or advice required must be given by the corporation, as such, after due convocation and discussion; it is not enough for the superior to ask each single member of the corporation separately and individually (Canon 105). The discussion is to be settled—at least if it is a question of consent —by the method of voting already described, unless the particular law under which they operate prescribes some other method. The superior can impose an oath of secrecy. In carrying out their duty his advisers must express their opinions respectfully, faithfully and sincerely (Canon 105 §3).

Duration and Extinction of Moral Persons

In Canon Law, every moral person is essentially perpetual. Generally speaking modern civil law is different in this respect, and in fact it is not required by natural law since a temporary foundation can easily be conceived, e.g., masses for fifty years. It is, therefore, necessary—but only because there is an express enactment to that effect—for the erection of a corporation, institution or foundation into a moral person that it should be founded if not for eternity, which is not of this world, at least without any time limit. This perpetuity has the effect that if (provided it is a moral collegiate person) a single member survives, he is the subject of all its rights, and, in the case where the corporation is recruited by co-option, he alone can assume new members. Such a character does not necessarily imply continuous activity; a corporation may function only at certain specified times, as e.g., the general chapter of a religious order. It is the duration of the institution that matters. Nevertheless a moral person may become extinct and that in two ways: (1) by formal decree of suppression issued by the competent authority; (2) if it

has given no sign of life for more than a hundred years. Thus the Holy See and the Holy See alone can, if it becomes impossible to apply the property of a pious foundation to its original destination, transfer it to some other purpose. Similarly, if a chapter has remained without canons for a hundred years it ceases to exist as soon as that period has expired; but as long as the hundred years are running the superior vested with the right of nomination can appoint canons again without the necessity of exhibiting a decree of erection in order to resuscitate it.

(4) *Acts of Persons*

In the most complete sense of the term, respect for human personality is the true product of Christianity. This is the reason why only conscious and deliberate acts are recognized by Canon Law as legally valid, at least in the case of those who have attained the use of reason. Canons 103 and 104 apply this principle in defining the general causes which invalidate actions in law: violence, fear, dole and error. These general notions are of great importance inasmuch as they affect all kinds of canonical acts, elections, renunciations, religious profession and other vows, betrothal and marriage, adult baptism, wills, absolution from censures, oaths, contracts dealing with temporal goods, etc.

Violence and Fear (Canon 103)

An act extorted by external pressure, which cannot be resisted, is null and void. It is sufficient that resistance would have been useless even at the time when it might have been attempted; but a person who has not resisted when he could have done so is held to have consented. Violence nullifies the act which it produces because it transforms a free agent endowed with initiative and above all responsibility into an instrument pure and

simple and treats him as a mere thing. Fear is a form of mental disturbance at the prospect of imminent peril or even of future danger. Under its influence the will is morally constrained to will what it would not otherwise have willed. This is the old Roman Law notion which has been taken over by the canonists. Even when fear is grave and unjustly caused, it does not—at least as a general rule and saving always the exceptions made by law—nullify acts performed under its sway. In this respect it differs from violence which removes free will, while fear on the contrary merely weakens it. An analysis of fear shows in fact that it is an act whereby the will accepts one evil in order to avoid a greater.

Certain actions are, however, of such importance to the individual or to society, because by their nature they demand full and entire freedom, that the law can declare that they are rendered null by grave and unjustly caused fear: such acts are—voting at an election (Canon 169), renunciation of an office (Canon 185), religious profession (Canon 572), marriage (Canon 1087), vows (Canon 1307 §3) and remission of a penalty (Canon 2238).

But even when fear does not make an act null, a wrong is unjustly inflicted (if the fear itself has been unjustly caused), and a wrong which may be extremely serious. Such a wrong demands reparation which consists—if it is to be adequate—only in restoring the injured party to that state from which he has been unjustly removed, by depriving the aggressor of any undue benefit which he has acquired. Thus it is a question of rescinding, not of annulling, and the judge quashes an act which was indeed valid but could not be allowed to remain in force without violation of justice.

In cases of nullity as well as in those of rescission, there can be question only of fear caused by an external free agent; consequently, if unreasonable fears are produced

by some abnormal mental condition, there is no constraint though there may be insanity. If the fear of some imminent catastrophe impels a person to make a vow, the vow is perfectly valid, and a superior cannot regard it as voidable since in this case there is no wrong to be righted, that is to say on the score of fear alone.

Error concerning some substantial element or some definite condition *sine qua non*, can, generally speaking, make an act null and void. Hence the legal effect of error is greater than that of fear, the reason being that in both hypotheses it destroys consent. If the object of an agreement differs substantially from the consent itself, then there has been no true consent to that object. If I sign a conveyance when in reality my intention is merely to let a house, I can truthfully say that I have given no consent to the sale of the house; my intention has been frustrated. When the error is concerned with some element which although non-essential constitutes an explicit condition of such a nature that the consent depends on it and which is the cause of the adhesion of the will, it must likewise be concluded that the will acts so to speak in the dark and is dealing with a fiction since it is attaching itself to a mere nothing—to a circumstance or quality which is non-existent. A man marries a young woman under the declaration that his consent is withheld if she is not a virgin. If she is not, then there is no marriage because the consent depended essentially and by explicit intention on a circumstance which did not in reality exist (Canon 104).

Error even when it is not the cause of nullity may have legal consequences. In such cases it is assimilated to fear and like it may ground an action for rescission. In point of fact it is only in cases where error is concerned with a substantial element or a condition *sine qua non* that it causes injury. It may cause serious injury while at the same time the act done under its influence is quite valid.

In the case of a sale where the price of the object which passes is considerably lower than its value, the contract remains legally valid (at least if the price is not too low) and would nevertheless be a source of considerable loss to the vendor. The latter, if he has suffered loss through no fault of his own, can institute proceedings before a judge and secure a declaration quashing the contract on the ground that it was too onerous.

Finally, in certain privileged cases, the law regards as null certain acts infected with error which concerns neither a substantial element nor a condition *sine qua non*. Such is the case where marriage is by mistake contracted with a slave (Canon 1083).

Dole (Canon 103) occurs when someone induces another by means of fraud or trickery to consent to some act or contract. The Code assimilates its effects to those of fear which in theory does not nullify acts done under its influence; but as dole produces error Canon 103 must be interpreted in the light of Canon 104, with the conclusion that if dole generates error which is substantial or concerns a condition *sine qua non* it is a cause of nullity. When it gives rise to accidental error only and there is no express condition, but it is the determining element in a decision already made, like fear, it may justify the quashing of the resulting act or contract; in such a case freedom is not in fact taken away but unjust injury has been inflicted which can be adequately repaired only if the *status quo ante* is restored. The reason is the same as in the case of fear; hence it is easy to see why the law deals with both in the same canon although dole constitutes an aggravation of error. The rescissory action is competent even if the person in fault has acted for the interest of a third party and not for his own advantage; moreover, it is allowed against a possessor in good faith, always saving the latter's right to proceed against a former unjust possessor.

When violence, fear, dole or error have been causes of nullity or have, at least, made a legal act or contract rescindable, a person may perhaps in the internal forum of conscience consider himself free from the external and apparent obligation; but in the external forum no man may be his own judge, and application must be made to the competent authority. The Code has laid down the principles to be observed in actions for declaration of nullity (Canons 1679-1683) and rescission (Canons 1684-1689), and always presupposes procedure in due form. Moreover, the injured party can get damages not only for the injury caused by the act itself but also for loss arising from the necessary delays and formalities. The judge can intervene *ex proprio motu* and in virtue of his office when the public good is at stake (or the good of souls, Canons 1618 and 1682) or when it is a question of poor persons (Canon 1682, nullity, Canon 1688 §2). Minors have, in addition, the remedy of rescission properly so-called, viz., the *restitutio in integrum* (Canons 1687-1689).

CHAPTER II

GENERAL IDEAS ON THE CLERGY

Divine institution of the clergy—Admission to the clergy—The hierarchy of clergy—Transmission of the powers of the hierarchy.

(1) *The divine institution of the clergy*

Canon 107 of the Code teaches that, by divine institution, there exist in the Church clerics as distinct from the laity although all clerics are not of divine institution; moreover laymen as well as clerics can become religious. Few thinkers and historians will deny that any society can endure without authority and that a religious society is any more exempt from this necessity than any other society. The essential question that suggests itself is whether the clergy made their appearance in the Church owing to circumstances of a contingent nature, or whether they were established by God Himself as a result of the express and formal desire of Our Lord. This is the reason why the Code in dealing with this distinction between clergy and laity mentions, at the very outset, the divine institution which is the cause of it.

This divine institution was denied by Calvin who went so far as to remove all distinction between clergy and laity (*Institution Chrétienne*, Book iv, c. xviii, No. 2 and c. xix, No. 28). In this he has been followed by many Protestants. For the last fifty years critics, both Liberal Protestant and Rationalist, have made every effort to express in a scientific way the theory that the Catholic

clergy have a purely human origin. The pioneer in this matter was an Englishman, E. Hatch, who in 1860 gave a course of lectures at Oxford on the organization of the ancient Christian Church (3rd Edition, London, 1895) which Harnack soon made known in Germany.* According to Coppens the many attempts stimulated by Hatch's influence may be reduced to three main systems:
(1) that it was borrowed from the Jews of the Dispersion (the old idea of Vitringa in the seventeenth century and taken up again by Hottzmann);
(2) the theory which establishes dependence between the Christian deacon-bishops and the officials of the religious colleges of the Roman Empire (Renan, Weingarten, Hatch and Harnack (with modifications));
(3) the theory of a development which was independent indeed, but foreign to the mind of Christ (Weiznecker and Sohm).†

"As for the Jewries it was inevitable that a religion created in the midst of Judaism could not ignore its institutions. But even admitting—a fact which is definitely unproven—that these institutions might have been able to provide the model and exemplar of the various forms of the Christian hierarchy (with particular reference to the elders or presbyters), this does not touch the heart of the question with which we are concerned; the question which needs explaining is this: what internal impulse, what organic principle of development induced the Christian communities to reproduce them everywhere and to regard them as apostolic institutions? To account for occasional causes which might have served to determine such external forms of the primitive hierarchy is to explain nothing at all—and this one

*E. Hatch and A. Harnack Die Gesellschaft werfassung des christlichen Kirchen im Altertam, Giessen, 1883.

†Joseph Coppens. L'imposition des mains, thèse de doctorat de l'Universite de Louvain; Wetteren et Paris 1925 p. 119.

point alone is of interest in relation to the divine right of the hierarchy—about its very existence and the real reasons why it should exist" (G. Brunhes *Christianisme et Catholicisme*, Paris, 1924, p. 355).

"As far as pagan religious societies and municipal institutions are concerned . . . it is nowadays generally admitted that they have not been the object of any borrowing on the part of Christian communities." (ibid.).

Finally, the third system has the not unimportant drawback of making order the child of anarchy. It starts off, indeed, from the various functions which were at first adopted by certain inspired persons in the first Christian churches by virtue of the gifts or charismata received from the Holy Ghost. (Such persons were called charismatics, cf. I Cor. xiii and xiv on the gift of tongues, prophecy, etc.) Once these charismata became permanent they must immediately have produced a missionary personnel of apostles, doctors, etc. who always enjoyed private inspiration. Finally, communities were given administrators, elders or presbyters, overseers or bishops (hence our terms bishop and priest which correspond to widely different functions) who, after some time, and owing to the falling off in charismata, must have annexed, in addition to what were originally purely external and temporal functions, the monopoly of teaching and spiritual power; and all this series of individual or collective beginnings had nothing to do with the transmission of apostolic authority. (According to A. Sabatier, *Les religions d'autorité et la religion de l'esprit*, Book I, ch. IV. Here again, as on many other points, Sabatier is merely a clever popular writer.)

But private inspiration could produce nothing but disorder because of the meeting and conflict of different institutions. In point of fact there was no chaos, and that being so, then some authority did intervene, which authority is the apostolate. Indeed, we observe St.

Paul intervening vigorously at Corinth in order to control the charismatic manifestations (I Cor. xiv).

It is also the case that everything which pertains to the hierarchy and clergy of the Church is derived from the apostolate, which in turn was willed by Our Lord and accepted as such from the very beginning of the Christian communities. From the beginning of his ministry Our Lord picked out his disciples who, under the name of Apostles, or messengers, were to be set apart from, and above, all the others. He attached them to himself by an absolutely special and spontaneous act, indicating thereby that it was because of their vocation that they occupied their position and played their part among his followers and not because their faith was earlier than that of the others. Jesus could indeed say "you have not chosen me: but I have chosen you." Soon the first-called are the "twelve" known by this name and consequently designated as a group separated from the general body of the disciples and that during the very course of the public ministry, and probably very early in that course.

These twelve were sent by the Master to preach penance, as he did, in view of the approaching kingdom and like him to heal the sick. They are intimately associated with his work and similarly associated with the mission which he had received from his heavenly Father: "He that receiveth you receiveth me, and he that receiveth me receiveth him that sent me" (Matt. x, 40). With the passage of time this group acquires till more pre-eminence and independence, when Our Lord hides himself for a brief spell from the misunderstanding of the people and the hostility of the religious leaders of Israel, and the Apostles accompany him to the borders of Tyre and Sidon, and to Caesarea. Finally, during the last days of Our Lord's visible existence, since it is becoming more and more difficult to limit to the twelve

the circle of believers definitely gained for the gospel, and since despite this, the position of the twelve is in no way diminished inasmuch as Jesus reserves his last confidences for them, we are perforce obliged to admit that from that time distinctions and the outline of a hierarchy were established among the disciples.

Even in the little group which Jesus himself specially selected, instructed and delegated, one personality is outstanding, namely, that of Simon Peter. There is nothing to show that the surname of Cephas (Rock) which he bore was bestowed upon him by anyone but Our Lord, and this surname by itself, not to mention the famous declaration "Thou art Peter," indicates that Simon is first not only according to faith but still more by virtue of the fundamental office which has been entrusted to him. Thus the visible unity of the apostolic College is ensured for the period which is to follow the death of Our Lord by being grouped round the Vicar of Christ.

Moreover, it is only these beginnings on the part of Jesus which explain how, from the very dawn of the Church's life, the authority of the twelve, and over and above it that of Peter, were exercised without the slightest delegation from the first community at Jerusalem, which evidently saw therein a power already acquired and recognized. Every decision of importance, albeit taken in the midst of Christian brotherliness, is taken only under the control and with the sanction of the twelve when it is not indeed taken on their initiative. They are the mouthpiece and representatives by birth of the Church. However closely united they may be, the brethren never for a moment dream of ignoring their authority or of looking for authority beyond the privileged witnesses to Christ. When deacons make their appearance, followed by elders, they are obviously only inferior fellow workers with the twelve.

Other communities were soon founded: they remained under the authority of the apostolic College or of one or other of the Apostles, and alongside this supreme authority all other functions paled into insignificance. If any supernumerary apostle (of whom the greatest, though not the only one, was Paul) was added to the twelve it was done only with the approval of those whom Jesus had called. In particular, with regard to the convert of the Damascus Road the apostolic College accepted him only because they acknowledged in the revelation made personally to him the equivalent of vocation by Christ during his life on earth.

If certain critics look with misgiving on the preceding data because they are taken from the Acts of the Apostles which is supposed to be tendencious, they may be referred to the most undisputed epistles of St. Paul. These writings—the oldest Christian documents—establish beyond any shadow of doubt the palmary importance of the apostolate in the life of contemporary communities. The Apostle of the Gentiles claims full and entire authority over the churches founded by him. He clearly asserts that he is the teacher, director and judge of his converts. All other ministers of the Gospel whom he mentions as working amongst them are strictly subordinated to him. When he desires to establish this all-embracing authority over the Galatians or Corinthians, his whole argument consists in assimilating the call heard by him on his way to Damascus to the vocation of the twelve, the latter being, in the opinion of his readers, the principle, so to speak, of the highest spiritual powers. The opinion was, therefore, general and beyond all controversy—even in the midst of the liveliest disputes on the value of the Mosaic Law—that the Apostles were absolutely in command of the various Christian bodies. An apostolate of divine institution is consequently the outstanding ecclesiastical fact in the first generation of

Christians. The Church does not make her entry into history as an amorphous society; from the very date of her institution she comprises both governors and governed, and that by the express will of her founder.

But was this religious authority perpetuated in the Church in the manner willed by Christ in such a way that the Catholic clergy are the heirs to the divine mission received by the Apostles? or when they passed out of existence did the clergy put in their stead leaders who appeared on the scene by force of circumstances without any delegation from the men who were sent by Jesus Christ? We may say right away that granted the importance of the apostolate it is far from likely that the authority which succeeded was not in some way connected with them. But we are not reduced to mere conjecture on this point: a whole chain of evidence allows us to establish the fact that there was a transmission of powers from the apostolic College to the Catholic clergy. We shall take the facts retrospectively in order to start with those which are least disputed. At the beginning of the second half of the second century, it is clear that the monarchic episcopate, i.e., the authority of only one leader over the Christian community of a city, was established everywhere, in Rome as in Lyons, in Corinth, Crete, and in the East. This identical result in the fates of churches which were widely separated from one another, almost lost in the immensity of the Roman Empire and which were related rather by the bond of brotherhood than by fully acknowledged hierarchic dependence, is most significant. It reveals a primitive setting which imposed itself on the development of each particular church despite its comparative isolation. Moreover, despite a certain sally of St. Jerome, there is no trace in documents almost coeval with these far-off events of a revolution which created the bishop, the sole ruler of the Church, and which substituted him for a

college of elders; the monarchic episcopate was established normally and naturally without any usurpation, undramatically and without the slightest protest from those whom presumably it had unjustly evicted. The fact is, that the apostolate was regarded as the very essence of the new religion and, further, at least in some churches, the lists of bishops from apostolic times were already given. Hegesippus is a witness who "in travelling from church to church states that, as a fact, the faith is the same everywhere and that this faith goes back to the Apostles by a succession which is everywhere verifiable";* again we have the testimony of St. Irenaeus who gives the succession of bishops of Rome, and St. Dionysius of Corinth gives that of the bishops of Athens.† In certain regions this monarchic episcopate existed from the first quarter of the second century and the letters of St. Ignatius of Antioch bear witness to this being the case in Syria and in the Roman province of Asia.

If we now turn to the apostolic period, we observe that the Apostles transmit their powers to fellow-workers, some of whom undoubtedly do not possess the qualification of being head of a community with the requisites to succeed them, but that others possess an authority comparable, though not equal, to their own. When the twelve find it necessary to unshoulder the burden of serving the tables by having ministers of a subordinate rank, the community at Jerusalem present to them the seven, "and they, praying, imposed hands on them" (Acts vii, 6). During their first missionary journey, Paul and Barnabas traversed the south of Asia Minor, instituted the elders in every church and after prayer and fasting commended them to the Lord in whom they had believed (Acts xiv, 22). At the end of

*Battifol L'église naissante et le catholicisme p 260.

†G. Brunhes. Christianisme et catholicisme p 361.

his career, St. Paul delegated to his disciples Titus and Timothy a wider authority, since it included the power to ordain bishops and elders which is the exclusive privilege of the episcopate. He imposed hands on Timothy (II Tim. i, 6) and gave him authority over the elders and deacons (I Tim. iii and v). He ordered Titus to institute elders in every town (Titus i, 5). These two disciples of the Apostle transmit spiritual powers and are true bishops and suitable heirs to the apostolic succession. Thus we have here a clergy consisting of deacons, elders and apostolic delegates instituted by the Apostles themselves. Moreover, there is a sufficiently large number of texts to prove that the different functions exercised in the Church are regarded as having been established by God himself. "Take heed to yourselves and to the whole flock wherein the Holy Ghost hath placed you bishops to rule the Church of God" writes St. Paul to the elders of Ephesus (Acts xx, 28). He also writes to the Corinthians, "And God indeed hath set some in the Church, first Apostles, secondly prophets, thirdly doctors, after that miracles, then the graces of healings, helps, governments, kinds of tongues, interpretations of speeches" (I Cor. xii, 28). A passage in Ephesians seems to be a replica of this verse: "And he gave some Apostles and some prophets and other some evangelists and other some pastors and doctors" (Ephesians iv, 11). Hence, if the clergy are thus represented as having been instituted by God himself, it is because Our Lord indicated, by some of his expressions, that the spiritual authority and priesthood founded by him in the persons of the twelve Apostles were to be perpetual. The words of institution of the Holy Eucharist, as given by S. Paul, show that it is a memorial which is to last till the end of the world: "For as often as you shall eat this bread and drink the chalice, you shall show the death of the Lord, until he come" (I Cor. xi, 26). Now

perpetuity of sacrifice presupposes perpetuity of the priesthood whose duty it is to offer sacrifice, and the coming of Our Lord refers to his appearance at the end of the world. The final commission of Jesus to the twelve in St. Matthew's gospel opens up a wide enough perspective: "All power is given to me in heaven and in earth Going therefore, teach ye all nations: baptizing them in the name of the Father, and of the Son and of the Holy Ghost. Teaching them to observe all things whatsoever I have commanded you: and behold I am with you all days, even to the consummation of the world" (Matt. xxviii, 18-20). The authority of Jesus is delegated to the apostolic college which has to instruct, sanctify and command to the end of the world, with the perpetual assistance of its founder. It is impossible to indicate in a clearer manner that the apostolate was not a fleeting institution.*

We can, therefore, without the slightest fear of misreading history give our adhesion to the truth of faith defined by the Council of Trent in the following terms:

"If any one saith that there is not in the New Testament a visible and external priesthood, or that there is not any power of consecrating and offering the true body and blood of the Lord, and of forgiving and retaining sins . . . let him be anathema" (Session XXIII, ch. IV, Canon 1).

N.B.—The term laity is used for the first time in Christian literature by St. Clement in his letter to the

*Many critics dispute the authenticity of the texts quoted above. Considerations of space prevent our entering upon a discussion with them. All we can do is to refer the reader to commentators on the Gospels and Acts and in particular to Jaquier and Lagrange: suffice it to say that the critics make more capital out of preconceived ideas as to the impossibility of a church organisation foreseen by Christ and realized in essentials from its very beginnings than philology or textual criticism warrants. The fallacy of begging the question is often too obvious.

Corinthians written between 95 and 98. "Special functions have been given to the high priest: special places have been assigned to the priests: special duties are incumbent on the levites, and the laity are bound by precepts which are peculiar to them" (Chap. XL, No. 6). In the Greek version of the Old Testament made by the Jew Aquila in the second century of our era, the adjective "lay" means "profane" (Ezechiel XLVIII, 15) or "common" (I Kings xxi, 4). Perhaps the Hellenistic Jews already used that expression at the end of the first century, in which case the Christians may have borrowed it from them. It is not found in pagan authors.

Among the Christian authors who wrote in Greek, the word "*cleros*" retains, during the first two centuries, its various classical meanings—portion, lot or heritage. On passing into Latin under the form of "*clerus*" the word assumes in Tertullian and St. Cyprian the sense of "clergy," either because ecclesiastics have God for their portion, in accordance with the words of the psalmist "the Lord is the portion of my inheritance and of my cup" (Psalm xv, 5), or because they themselves are the portion of his flock specially chosen by God (Tertullian *De monogamia* c.12, P.L. Vol. II, 947, St. Cyprian *Epistola* XLII Hartel's edition, p. 592). As for the expression "clericus" (cleric), it is found for the first time only in Arnobius in the fourth century.

(2) *Admission to the Clergy*

Entrance to the clergy is effected by reception of the tonsure (Canon 108 §1) and not by the mere fact of wearing the ecclesiastical dress. The obligation of wearing the tonsure passed from the monks to the clergy in the sixth century, and originally it was received with the first order, viz., porter or lector as the case might be. Subsequently the discipline was changed,

starting from the eighth century in the West. We read in the life of Pope Stephen III (768-778), which is inserted in the *Liber Pontificalis* (a collection of biographies of the Popes), that the prayer for making a cleric was pronounced over Constantine *before* he was ordained (this is the prayer "ad clericum faciendum" in the *Gregorian Sacramentary*, P.L. Vol. LXXVIII, c. 212). The fifty-eighth Canon of the Council of Meaux (845) mentions those who are inscribed in the Canons (canonici) are tonsured and educated in the parishes and that sometimes they are ordained there (Mansi, *Amplissima Conciliorum Collectio*, Vol. XIV, c. 832). These two texts obviously imply that the tonsure was then beginning to be received before any order. In the twelfth century this custom became law and in fact Innocent III writes to the Archbishop of Rouen that first tonsure is the entrance to the clergy (*Decretals*, Book I, Title XIV, ch. XI).

Among the Easterns, up to the twelfth century tonsure was given with the first order. In the twelfth and thirteenth centuries the Latin discipline penetrated among them, and the Canonists Zonaras (+1150) and Balsamon (+1214) bear witness that at that time, in the East, tonsure was given, as in the West, before the reception of any order; later on the ancient custom which combined the tonsure and the first order prevailed and has persisted down to the present day even in those Eastern churches which are in communion with Rome; e.g., among the Maronites, tonsure is given only with the first of the minor orders, i.e., that of cantor.

In the Latin Church the tonsure is distinct from orders and confers no spiritual power; it is simply a general consecration to the divine ministry in preparation for orders.

(3) *The Hierarchy of Clergy*

The hierarchy may be defined as the combination of clerics among whom ecclesiastical power is divided according to distinct and subordinate degrees. The hierarchy of order is the series of persons who possess the power of celebrating the divine mysteries. The hierarchy of jurisdiction is the series of persons charged with the governing of the Church, either in what concerns the intellect, by the teaching of true doctrine, or in what concerns the will, by direction given to souls in order to make them co-operate effectively with grace. In the present discipline of the Church these two hierarchies are clearly distinguished: the Jansenist Bishop of Utrecht ordains validly although he does not possess the slightest shred of jurisdiction, and a cleric in minor orders, or a tonsured cleric with no orders at all, may have even Episcopal jurisdiction as was too often the case, especially under the ancien régime in France. A vicar-general takes the place of the bishop as far as regards jurisdiction, but not in respect of the power of order, and conversely a titular bishop possesses the power of order without necessarily having any jurisdiction.

The hierarchy is partly of divine and partly of ecclesiastical institution. From the point of view of order, bishops, priests and all the other ministers of the altar are of divine institution. This teaching of the Code (Canon 108 §2) merely recalls the truth of faith defined by the Council of Trent: "If any one saith that there does not exist in the Catholic Church a hierarchy instituted by order of God which consists of bishops, priests and ministers, let him be anathema" (Session XXIII, Canon VI, ch. IV).

The other ranks of the hierarchy of order, subdeacon, acolyte, exorcist, lector and porter are of purely ecclesiastical institution, and the Church was able to institute

them without affecting anything essential to sacramental discipline because they are not sacraments. They may be considered as part of the diaconate, and the Council of Trent in defining the hierarchy of divine institution calls deacons ministers, and the Code following Trent, does the same, in order to show that the order of deacon contains in a higher manner all the functions of the inferior ministers of the altar. The latter seem to appear only in the middle of the third century, when St. Cornelius (251-253) writes to St. Fabianus of Antioch that there are in Rome forty-six priests, seven deacons and seven subdeacons and fifty-two exorcists, lectors and porters (*Eusebius Ecclesiastical History*, Book VI, c. 43, No. 7).

The hierarchy of jurisdiction includes only two ranks of divine institution, the sovereign pontificate and the episcopate which is subordinate thereto (Canon 108 §3). This statement tallies exactly with historical fact and that in two ways. From the very outset we note that there are in the gospel two authorities and only two—that of Jesus himself, whose representative was later on to be Peter, and that of the twelve Apostles. The interpretation of the text "Thou art Peter" may be left to the theologians and exegetes with the observation that whatever its meaning may be, the Liberal school of exegesis with Harnack and others tend more and more to see in it a delegation of Christ's own power. A real power of governing is entrusted to these two authorities (the vicarious authority which is to represent visibly that of our divine Saviour, and the authority of the Apostolic College) by the giving of the keys (to Peter) and the grant of the office of binding and loosing (to Peter in Matt. xvi, 19 and to the twelve in Matt. xviii, 18—an expression of wide significance in Rabbinic terminology), together with the final injunction to continue the work of Christ until the end of time (last

verses of St. Matthew). In the second place all the other ranks in the hierarchy of jurisdiction make their appearance only on the lapse of several centuries, and for some of them, many centuries after the apostolic age: metropolitans, patriarchs and cardinals above the bishops, archdeacons, parish priests and the rest below them. While, therefore, the Code of Canon Law groups all ecclesiastical offices under two heads, "Sovereign power and those who participate therein by virtue of ecclesiastical law (Book II, Title VII) and Episcopal power and those who participate therein (Book II, Title VIII), "it does not "canonize" unlawful usurpations, but presents a type of hierarchy in absolute conformity with the gospel: on the one hand, Christ and his twelve Apostles: on the other, the Episcopate centring round the Vicar of Christ.

(4) *Transmission of the powers of the hierarchy*

"Those who are adopted into the ecclesiastical hierarchy are admitted thereto not by the consent or voice of the people or of the secular power; but they are constituted in the different degrees of power of order by sacred ordination; in the supreme pontificate by divine law itself, subject to the condition of legitimate election and acceptance thereof; in the other ranks of jurisdiction by canonical mission" (Canon 109).

We have already seen that everything in the Church is connected with the apostolate, and no one can have authority and power therein unless such powers are connected directly or indirectly with the Apostles. St. Clement had already put the point quite clearly at the end of the first century: "The Apostles were sent as bearers of good tidings to us by Our Lord Jesus Christ. Jesus Christ was sent by God. Hence Christ came from God and the Apostles from Christ; these two facts flow

in admirable co-relation from the will of God. Strengthened by the teaching of Our Lord Jesus Christ and absolutely convinced by his resurrection, the Apostles were confirmed by the word of God and proceeded with the guarantee of the Holy Ghost to announce the good news—the coming of the kingdom of God. They preached in the towns and all over the country, tested their first fruits in the Holy Ghost, and instituted them as the bishops and deacons of future believers" (Chap XLII. Translation by H. Hemmer, Paris, 1909).

PART II

PREPARATION FOR THE CLERICAL OFFICE

CHAPTER I

TRAINING OF THE CLERGY

History—Present rights of the Church—Recruiting—Necessity for seminaries—Direction of seminaries—Admission to a seminary — Internal life — Temporal administration—Exemption.

(I) *History*

The Church has always ensured that her clergy receive a certain intellectual and moral training, but this training has been more or less complete and prolonged in accordance with the times and the more or less abundant facilities which they offered in this respect. During the first eleven centuries, clerics were prepared for the exercise of their sacred functions in the households of bishops or parish priests. In the Patristic age we observe St. Augustine, St. Martin, St. Eusebius of Vercellae and St. Basil, to mention only the most famous bishops, gathering around them a community of clerics the youngest of whom were trained for the ministry under their guidance. During the early middle ages attempt was made here and there to erect this custom into law. The Second Council of Toledo (531) expresses itself as follows in Canon 1: "In the matter of those whose

parents have consecrated them from their earliest years to the clerical ministry, we have decided that as soon as they are tonsured and promoted to the lectorate, they must be instructed in the church house, in presence of the bishop and by a master who shall be specially placed over them."

The Council of Tours (513) embodies a similar decision in Canon 12: a priest must not be ordained before the legal age, that is to say, the thirtieth year; but before approaching priestly consecration he must live in the bishop's house (*in episcopio*) in order to learn the functions of his order. This stay was to be long enough to enable his manners and conduct to be known, and it was only thereafter that he could be promoted to the priesthood if he were worthy of it.

Besides the episcopal communities, presbytery schools are observed spreading from Italy to Gaul at the beginning of the sixth century. "It is our will that all priests established in parishes (at that time there were only country parishes) in accordance with the custom which is, we know, observed all over Italy with excellent results, should receive as far as possible into their own houses young, unmarried clerics. They must, like good fathers, give them spiritual nourishment, make them learn the psalms, read Scripture, know the law of God in such a manner as to prepare worthy successors for themselves and to receive from the Lord an eternal reward. When they have come to full age, if one of them wishes owing to the weakness of the flesh to take a wife, he must not be denied freedom to contract marriage" (Second Council of Vaison (529), *c.* 1, Bruns, *Concilia*, Vol. ii, p. 183).

The clergy were thus educated under the very eyes and in the private houses of bishops and parish priests; but in the case where the bishop was absorbed in business and surrounded by a large staff, there would be an

institution distinct from his house devoted to the training of the clergy. That this was the case is certain, at least in eighth century Rome.

"The Roman clergy was recruited by two methods according to the social status of candidates. Those who came from the people were educated in a kind of seminary—the *Schola Cantorum*, not far from the Lateran. This establishment was also called the orphan's home, *Orphanotrophium*. Children of noble birth entered the pontifical palace where they took their places among the *cubicularii*. Both sections were tonsured immediately; which at once affiliated them to the Roman clergy, and gave them the much-coveted privilege of adorning their horses with a white saddle-cloth. At the end of the novitiate, the order of acolyte was given; the other minor orders were no longer really exercised, and their bestowal within the *schola cantorum* had lost all importance. The acolytes were distributed among the presbyterial titles—they were all the clergy of the cardinal priests. These clerics were not bound to celibacy. As a general rule they married, and it was only some years after, on promotion to higher orders, that they were bound to celibacy. Even then they did not interrupt family relations more than was absolutely necessary. The wives of the higher clerics were not cloistered; they even shared, to some extent, in the promotion of their husbands and became *diaconae*, *presbyterae* and *episcopae*. On the day when their husbands were promoted to the priesthood or to the diaconate, there was also, for their wives, some kind of ceremony which marked their rise in dignity. Besides the ordained clergy, who, for the most part, had had time to become established, there was, in addition, the very numerous category of unordained clerics in the service of the chancellory or administration, as notaries, advocates, chamberlains, procurators, etc. They all

constituted a kind of clerical caste furnishing the necessary recruits for the *schola cantorum*, filled all the ecclesiastical offices, consolidated their position in the *cubiculum sacrum* by the addition of aristocratic elements and reached the highest ranks of the sacred hierarchy, including even the pontificate itself. When the temporal power became definitely organized, this hierarchy found itself charged with the conduct of various matters originally foreign to it. Its distinction and attractiveness were considerably enhanced and the *cubiculum*, as the gateway to the clergy, became a formidable rival to the *orphanotrophium*. As will be seen, it constituted a stern test for the ecclesiastical spirit (L. Duchesne: *Les premiers temps de l'état pontifical*, 3rd edition, Paris, 1911, chap. iv. *Institutions Romaines au VIII siècle*, pp. 103-105).

In the West, the sixth and seventh centuries were a period of deep-seated intellectual decay. The training of the clergy was affected by it, and we shall see later on that there must have been at that time a fair number of the clergy who were completely illiterate, unable even to read. The country clergy in particular were often poorly educated, because they were recruited not solely from the presbyterial schools (which, moreover, did not exist everywhere); it often happened that by popular election some honest worthy fellow was chosen to administer the parish who had been a serf in a country villa and whose sole preparation for the priesthood up till then was the life of an ordinary decent Christian; then the smallest manuscript was at that time a luxury; how many of them would be in circulation in country presbyteries?

The relative renascence of letters and teaching in the Carlovingian period began progressively to modify this parlous state of affairs, and educational establishments spread little by little in the West. To cite only one example, the Council of Rome (825) ordered the

creation of proper episcopal schools (Canon 34). In the tenth century—the century of iron—the movement slowed up. Then it made such a good recovery, that in the twelfth century episcopal and monastic schools were flourishing. The Third Lateran Council (1179) ordained that in each cathedral chapter a benefice should be reserved for the "clergy-master," and this person became by the Fourth Lateran Council (1215) the canon theologian whose duty it was to teach the "*sacra pagina*" (theology based on the commentary on Scripture) to the priests and "the others" (*Decretals*, Book v, Title 5 de Magistris, chapters i and iv). The Fifth Lateran Council, Session xi, and the Council of Trent, Session v, chapter i de reformatione, provide for a theologian in every cathedral church. The universities came on the scene at the beginning of the thirteenth century and the colleges in their vicinity afforded shelter and some possibility of moral, as well as intellectual, education to the clerics. But only a chosen few could frequent these centres of ecclesiastical learning and, further, at the beginning of the modern era "there were long periods when the schools or colleges had died out or were smitten with incurable decay, or diverted from their original purpose" (A. Degert, *Histoire des séminaires français jusqu'a la Révolution*, Paris, 1912, Vol. i, p. 2). The new departure made by the Council of Trent in creating seminaries met an undoubted need; after a certain time it had the hitherto unattained result of organizing clerical education in a universal and settled manner, thanks to the institution which was specially designed for its needs—the seminary. "Whereas the age of youth, unless it be rightly trained, is prone to follow after the pleasures of the world; and unless it be formed from its tender years unto piety and religion, before habits of vice have taken possession of the whole man, it never will perfectly and without the greatest and well-

nigh special help of Almighty God persevere in ecclesiastical discipline; the Holy Synod ordains that all cathedral, metropolitan, and other churches greater than these, shall be bound, each according to its means and the extent of the diocese, to maintain, to educate religiously and to train in ecclesiastical discipline, a certain number of youths of their city and diocese, or, if that number cannot be met with there, of that province, in a college to be chosen by the bishop for this purpose near the said churches, or in some other suitable place" (Session XXIII, c. XVIII de reformatione). In obedience to these instructions, the Jesuits founded the Roman College in 1565 and shortly afterwards St. Charles Borromeo set up two junior and three senior seminaries in his huge diocese of Milan. Outside of Italy, and particularly in France, the text of the Council which refers only to a college was strictly interpreted, and establishments were set up where children mixed with grown ups and which, in due course, became ordinary colleges. Moreover at the time of St. Vincent de Paul, the maximum demanded was merely a few days of instruction and retreat before ordination. At this time the seminaries of the Oratory, St. Nicholas du Chardonnet, St. Lazare and St. Sulpice—this last in August 1642—were founded as senior seminaries distinct from the junior seminaries—the latter being, at first, more numerous than the former, which existed for more than a century under the ancien régime. Thus France had the honour of ensuring the best of training for her clergy, and after the upheaval caused by the Revolution it resumed without much delay this glorious tradition imitated to some extent everywhere and even in Italy. It may be added that the foundation of Catholic Institutes for higher studies fifty years ago has raised beyond measure the teaching staffs of the French seminaries. It would seem that the Seminary is destined to be for a

long time the normal means for educating the clergy, and if we say "for a long time" without qualification it is because nothing on this earth is immutable.

(2) *Present rights of the Church*

In modern times the Church has constantly maintained, against the exclusive claims and interference of certain governments, her right to set up seminaries and control their organization. The erastian legislation of Joseph II at the end of the eighteenth century was not allowed to become law without protest. In the nineteenth century the forty-sixth proposition of the Syllabus was condemned—a proposition asserting that in clerical seminaries the course of study must be submitted to the civil power. The Encyclical "Jam pridem" of Leo XIII affirms that the erection and governing of seminaries is the exclusive right of ecclesiastical authority. Hence Canon 1352 of the Code merely repeats the traditional teaching, when it says that the Church has the peculiar and exclusive right of educating those who devote themselves to the ecclesiastical ministry. In fact she would not be an autonomous society had she not the power to educate her officers with the fullest independence.

(3) *Recruiting*

Parish priests have, in the first instance, the duty of supervising the recruiting of future ministers of the altar by noting vocations and occupying themselves with the duty of instructing in virtue, piety and the first elements of education children in whom they have discovered the signs of the divine call (Canon 1353). An excellent method of cultivating vocations is the "presbytery-school," which collects round the parish priest young aspirants to the priesthood and whose

multiplication in France was encouraged by Leo XIII (Letter to the French bishops in 1899): it is to be noted that Canon 1353 presupposes an interior and personal vocation in future priests, and it is merely a question of discovering its manifestations: it is similarly presumed when a bishop is recommended to inform himself as to the vocations of his students, when he visits the seminary. It can, therefore, no longer be said that a vocation, in the strictest sense of the term, consists entirely in the bishop's call, as the approval given by the Roman authorities to Lahitton's book on 15th July, 1912 would seem, at least, to imply. Hence the traditional teaching of the French seminaries emerges unscathed from the controversies of fifteen years ago.

(4) *Necessity of Seminaries*

There should be a seminary in every diocese (Canon 1354 §1 which partly reproduces the exact text of the Council of Trent). Further, at least in the more important dioceses, there should be a junior seminary for the ordinary studies of boys, and a senior seminary for the teaching of philosophy and theology (ibid. §2). This means the definite consecration of the French custom and a condemnation of a narrow interpretation of the Council of Trent, which saw in the use of the word "college" (in the singular) a prohibition of the double seminary—an interpretation which St. Charles Borromeo himself did not follow. But provision must be made for the case of dioceses with few facilities. Such dioceses may lack either resources or more commonly a teaching staff, especially for the senior seminary, in which case they may either send their subjects to another diocesan seminary or fall back on inter-diocesan seminaries where such exist; these can be created only by the Holy See (Canon 1354 §3).

(5) *Government of seminaries*

The bishop has the principal authority over the seminary; he decides all questions as to its government, administration and the developments to be introduced, and has to see that his orders are obeyed, saving always any prescriptions of the Holy See in particular cases. He must exercise vigilance by frequent visits and searching inquiries as to the studies, character, piety, vocation and progress of the students, especially at ordination time (Canon 1357 §§ 1 and 2).

Every seminary must have a rule for the students and one for the instructors as well, both approved by the bishop (Canon 1357 §3). It will be observed that, as far as episcopal authority is concerned, the Code makes no distinction between seminaries conducted by religious and other seminaries. On the contrary there is nothing to indicate that religious are to be debarred from directing seminaries, and on this point we are of opinion that the Code does not really depart from the previous legislation if it is properly understood. In interdiocesan and district seminaries created by itself the Holy See lays down the rules to be followed (*normae*) for their government and administration.

At the head of the seminary there must be a rector charged with the discipline; there must also be professors, a procurator who must be a different person from the rector, two ordinary confessors and a spiritual director (Canon 1358). All are bound to obey the rector in the exercise of his duties (Canon 1360 §2). He has the right of supervising the professors (Canon 1369 §3). The Code insists that the procurator must be distinct from the rector, but does not say that the professors must be distinct from the confessors. This tacit confirmation of the French custom became explicit when the Holy See, on 23rd December, 1921, approved the Constitu-

tions of the Sulpicians in their new form, which contain the following clause: "The Superior General or Provincial shall allot to the superior of each seminary as his assistants a certain number of priests belonging to St. Sulpice. They shall be directors, so-called, either because they share, with the superior, the direction of the seminary, or because one of their chief duties is hearing the confessions and acting as spiritual directors of the students in the seminary." (The context proves conclusively that these directors are, at the same time, professors.)

The Code recommends the choice for these various duties of men who are distinguished for learning and at the same time for virtue and prudence (Canon 1360 §1).

Finally, the bishop is bound to set up two committees to assist him in the direction of the seminary; one for discipline and the other for temporal administration, both composed of priests selected by him after consulting his chapter, and excluding the vicar-general and relatives of the bishop, of the rector of the seminary, of the procurator, and of the ordinary confessors. The members of these committees are appointed for six years and their mandate may be renewed. They have only a consultative vote, but their advice must be asked for every matter of importance (Canon 1359). This is the legislation of the Council of Trent, in a somewhat modified form. Benedict XV granted the Sulpicians permission to administer seminaries, under certain conditions, without these committees (23rd December, 1921, *Acta Apostolicae Sedis*, Vol. XIV, p. 37).

(6) *Admission to the seminary*

Only legitimate children whose character and intentions give promise that they will later on exercise the ecclesiastical ministry fruitfully and without ever relin-

quishing it may be admitted into the seminary. Before admission they must produce certificates of legitimate birth, of baptism, of confirmation, and of good character. In the case of a candidate who has been dismissed from another seminary or religious house, the bishop must secure references (if necessary, confidential) and may admit the said candidate only if the information supplied proves satisfactory, viz., that there is nothing to bar the candidate from the priesthood; if superiors are questioned by the bishop they have a grave obligation of supplying him with accurate information (Canon 1363).

(7) *Interior life*

The syllabus of studies is fixed by law. In junior seminaries there are required a serious study of religion in accordance with the age of the pupils and this study must occupy first place; the thorough teaching of Latin and the mother tongue, and the knowledge corresponding to the general culture and position occupied by the clergy in the district where the students will later on exercise their ministry. On this last point the prescription of the Code is purposely vague, thus allowing room for all types of local adaptations. The obtaining of degrees from State universities is neither required nor discouraged (Canon 1364). In the senior seminary the study of rational philosophy and the ancillary sciences (especially physical and natural) must last two years (Canon 1365 §1); these two years are to be regarded as a minimum, for the Code says "at least two years." For theology, the minimum is a four years course, during which the following subjects are taught: theology (both dogmatic and moral), sacred Scripture, Church History, Canon Law, Liturgy, Sacred Eloquence, and Ecclesiastical Chant. Lectures on Pastoral theology (theology in its relation to the active ministry) and on

the manner of catechizing children and adults, on hearing confessions, visiting the sick and assisting the dying, should be added to this course. This last recommendation stresses the necessity for professional training for priests and the disadvantages of an ecclesiastical knowledge which is too abstract and exclusively theoretical (Canon 1365). Theology and philosophy must be expounded according to the spirit, teaching, and principles of St. Thomas Aquinas, which does not mean to say that it is necessary to reproduce slavishly and word for word all the teaching of the Angelic Doctor (Canon 1366).

The standard of studies is maintained by two means: (1) the preference given in the selection of professors by the bishop and the committee charged with discipline to candidates who have gained the doctorate of a Catholic faculty, or an equivalent certificate from their major religious superiors (the Code adds "everything else being equal" because account must be taken of discretion, experience and moral worth, all of them qualifications which do not necessarily accompany knowledge in equal measure; moreover, a degree is not required because, at the present time, this would make the recruiting of a teaching staff impossible in many dioceses); (2) by specialization of subjects, sacred Scripture, dogmatic theology, moral theology and church history at least being each taught by different professors. (This is an ideal to be aimed at if not a prescription to be realized in every single instance, for the Code says: "Care shall be taken to . . .")

The law enters into similar details with regard to piety and moral formation. It indicates the minimum required in pious exercises: every day, morning and night, prayers in common, mental prayer for a certain space of time and attendance at Mass; confession at least weekly and frequent and devout communion: on Sundays and

feast days, attendance at High Mass and solemn vespers, the performance of liturgical functions, especially in the cathedral, if, in the opinion of the bishop, it is not detrimental to discipline and studies; a yearly retreat of at least a few days; at least once a week a spiritual instruction followed by a pious exhortation. Liberty of confession is ensured by two methods: (1) the superior cannot act as confessor to the students except in special cases for a grave and urgent reason and if, in addition, the penitent makes a voluntary request therefor. Thus the intention is to separate completely questions of discipline and of conscience, the external from the internal forum. A regulation of the Congregation for bishops and regulars dated 18th January, 1908, and addressed to the Italian seminaries had excluded the professors as well as the superior from the office of confessor. The Code has retained only the second exception (Canon 891); in the case where the professors participate in the direction of the seminary they may act as confessors—a result of the approbation of the Constitutions of St. Sulpice in 1921—except that they must refrain from giving any opinion when it is a question of one of their penitent's being promoted to sacred orders or being dismissed from the seminary (Canon 1361 §3). (2) Complete freedom must be left to the seminarists to approach other confessors, apart from the ordinary confessors, even outside the seminary, provided they have been appointed by the Ordinary; permission must be given by the superior without demanding any explanation and without showing any resentment (Canon 1361 §§1 and 2).

Superiors and directors must take care that the students conform to the rules approved by the bishop and to the programme of studies. They must further imbue them with the ecclesiastical spirit, teach them by word and example the rules of Christian courtesy, exhort them to put into practice the laws of health and cleanliness

and to combine in their conversation a certain distinction with modesty and seriousness(Canon 1369). Those who are intractable, incorrigible, instigators of secret plots, and those whose morals and character are not suited to the ecclesiastical state are to be dismissed. Youths of good character but who do not make the progress in studies which will justify the hope that they will acquire sufficient knowledge for the exercise of the ministry must similarly be dismissed. Offences against morality and the faith must be visited by immediate expulsion of the culprits (Canon 1371).

If circumstances are extraordinary, the bishop may authorize a candidate for sacred orders to do his preparation for them outside of the seminary. In such a case he must be entrusted to some priest who is both pious and a suitable director for a cleric, who will supervise and instruct him in piety. But it is to be desired that clerical training be carried out from the earliest years in a seminary and it is the rule that all theological studies must be done therein. A grave reason is necessary for dispensing from this last obligation and the bishop who grants it is answerable for it in conscience (Canon 972).

(8) *Temporal administration*

If the income of the seminary is inadequate, the bishop may supplement it by collections in parochial or non-parochial churches exempt or otherwise, by a tax of five per cent. on the surplus income of nearly all diocesan institutions even if they are exempt, the union with the seminary of simple benefices (which do not demand residence) such as those whose essential obligation is the celebration of foundation masses (Canons 1355-1356). Income from foundations for the education of clerics may be appropriated to the education of junior or senior seminarists even though they are not yet tonsured:

it is notorious that ordinary bursars have often attained the highest positions in the church (Canon 1362). We have already noticed that a committee of two priests assists the bishop by their advice in the temporal administration of seminaries.

(9) *Exemption*

Seminaries both junior and senior are exempt from parochial jurisdiction. The superior of the seminary exercises the functions of parish priest except for confessions and marriages, unless in the case of certain seminaries for which special rules have been made by the Holy See (Canon 1368).

CHAPTER II

ORDINATION

The minister of ordination—The proper bishop for ordination purposes—The subject of ordination—Ordination itself.

THE sacrament of ordination was instituted by Our Lord when he said to his Apostles at the last supper "Do this for a commemoration of me" and "receive the Holy Ghost whose sins you shall forgive they are forgiven them; and whose sins you shall retain they are retained."

We have seen that from the apostolic age it has been conferred by the rite of imposition of hands (cf. Canon 948).

(1) *The minister of ordination*

In a general way the ordinary minister of ordination is a consecrated bishop. The extraordinary minister may be a priest, either because particular prescriptions of law give the power of conferring certain orders to certain classes of individuals who do not possess the episcopal character, or a particular person is given such power by indult from the Holy See. The Code maintains a prudent indefiniteness in speaking of "certain" orders, presumably in order not to determine the controversy as to the authenticity of the Bull "Exposcit" (April 1489), which gave the abbots of Cîteaux the privilege of ordaining deacons. (The question has been exhaustively treated by Mgr. Boudinhon in the *Canoniste contemporain* from 1901-1902.) Boniface IX is said to have allowed

an English prelate who was only an ordinary priest to confer the priesthood; but this case seems much more doubtful than that of the abbots of Cîteaux (cf. *English Historical Review*, 1911). When the subdiaconate was a minor order the Pope allowed priests to give it (Gelasius, Letter 14, in the year 494). Whatever be the truth on these historical points, at the present time in the Latin Church the law allows ordinary priests to confer minor orders, if they are cardinals (Canon 239 §1)—(since the Code, this privilege is world wide; previously it was restricted to the titular churches of the cardinals in Rome)—if they are prefects apostolic (priests who occupy the position of resident bishops in missionary countries), abbots and prelates *nullius* (governing territories distinct from any diocese); but in this case the ordination is null and void if conferred outside their proper territory or after they have demitted office (Canon 957), a point which settles a pre-Code controversy); if they are abbots ruling an abbey, but only as regards their own subjects who have been professed by at least simple vows and only if the abbots themselves have received abbatial blessing—this last under pain of nullity (Canon 964 §1). As for indults they may be granted, e.g., to secular abbots like the abbot of St. Mary of Farfa, and the first dignitary of the Chapter of St. Mark at Venice, or else to commendatory abbots.

(2) *The proper bishop for ordination purposes*

Any bishop cannot be applied to at random for the conferring of orders, but recourse must be had to a bishop on whom one is specially dependent for this purpose (Canon 955 §1). This is a traditional principle in the Church. It is well known that Origen, who belonged to Alexandria, was deposed from the priesthood for having been ordained priest by the Bishop of

Cesarea in Palestine without authority from the Bishop of Alexandria (cf. Council of Nicea, Canon 16). Before the Code, Innocent XIIth's Constitution "Speculatores" (4th November, 1694) settled the question of dependence on a bishop for ordination: the essential element was "origin" understood somewhat differently from the Code definition (Canon 90), qualified domicile, acquired as the case might be, only at the end of three or ten years, benefice held in the bishop's diocese or the mere fact of living in his household. Modern conditions and the unsettled nature of present-day life made it often difficult to have recourse to a bishop for ordination, on one of the heads enumerated by Innocent XII. In France, origin —often taken in rather a wide sense—was good enough. The Code gives simpler and more practical rules. The proper bishop for the ordination of seculars is solely the bishop in whose diocese the ordinand has, at the same time, (1) his origin (in the canonical sense, ie., the place where his father had his domicile or quasi-domicile at the date of the ordinand's birth, or in the case of illegitimate or posthumous children, the mother's domicile or quasi-domicile); and (2) his domicile, or else his domicile alone if he takes an oath to remain for ever in the diocese. In this connexion it must be borne in mind that a minor's domicile is, by law, that of his parents, but that on the other hand domicile is acquired as soon as one goes to a place with the intention of remaining there permanently; that one may have several domiciles; and that finally the possibility of a purely diocesan domicile allows a seminarist who has attained majority to acquire a domicile in the diocese in which he intends to devote himself to the ministry from the time of his entrance into the diocesan seminary, although he will be leaving the said seminary within five or six years. Quasi-domicile is insufficient for ordination purposes.

To these rules there are the following exceptions:

(1) The case of a cleric who by the mere fact of getting the tonsure from a particular bishop is affiliated to his diocese (see later the chapter on "Incardination").

(2) The case of a bishop's subject whom he ordains for another diocese after due excardination and incardination.

(3) The case of a professed monk consecrated or ordained to minor orders by his own abbot (Canon 956).

Those who have already received any order from the Pope himself may not be promoted to a higher order without the authority of the Holy See (Canon 952). A bishop of the Latin rite who has a subject belonging to an Eastern rite may not ordain him without similar authority (Canon 955 §2). Vicars and prefects apostolic, abbots and prelates *nullius*, are assimilated to resident bishops (bishops who have a diocese properly so-called to govern, as distinguished from titular bishops, formerly called bishops "in partibus") in everything pertaining to ordination (Canon 957 §1).

All non-exempt religious are governed by the laws applying to seculars for the reception of Holy Orders (Canon 964 No. 4). Exempt religious are ordained in the diocese where their religious house is situated, with dimissorial letters from their major superiors (Generals of Orders, their assistants and provincials) (Canon 964 No. 2).

These dimissorial letters are the authorization given by a secular or religious ordinary to the bishop of another diocese to ordain his subjects. The proper bishop is bound personally to ordain his own subjects, but there may be some just preventing cause, e.g., illness or lawful absence (at Rome, at a Council, etc.). In this case he delegates a colleague to take his place, and sends him dimissorial letters together with sundry testimonials

with which we shall deal later on. He can do this as soon as he acquires jurisdiction, ie., from the moment that he takes canonical possession of his diocese, although he has not yet received the episcopal order by consecration. A vicar-general needs a special mandate in order to grant dimissorial letters. A vicar-capitular in charge of the administration of a diocese during a vacancy has this power, only after he has held office for a year and with consent of the chapter, unless the ordination of the subject is particularly pressing either by reason of a benefice received or to be received and which requires in the holder an order of some kind, e.g., the priesthood in the case of a pastor chosen by election, or by reason of some office which cannot otherwise be provided and which the good of the diocese makes it necessary to fill; but he cannot, on this account, admit to orders a subject whom the previous bishop has already definitely rejected (Canons 958-960).

Dimissorial letters may be sent to every bishop in communion with the Holy See except in the case of a bishop belonging to another rite, in which case an indult from Rome is necessary (Canon 961). They may be revoked or limited by the grantor or his successor, but do not expire if the office of the grantor comes to an end (Canon 963). A bishop who ordains the subject of another bishop without dimissorial letters is suspended from conferring orders for a year (Canon 2373). An ordinand who maliciously has himself ordained without, or with false, dimissorial letters is suspended from whatever order he has received (Canon 2374).

(3) *The subject of ordination*

Orders may be validly conferred only on a baptized male. Those who, like Monsignor Many, teach that deaconesses received, at least in certain churches,

proper ordination are of opinion that the masculine prerogative arises purely from ecclesiastical law which may vary thereanent (*De sacra ordinatione*, p. 194). The bishop is the judge of the qualities required for lawful ordination which are the aptitude for ecclesiastical duties and the absence of any impediment and/or irregularity (Canon 968). But, however worthy of orders a subject may be, his bishop may ordain him only if he considers him necessary or useful to the diocese, if he is a secular. Nevertheless a bishop may, after previous excardination and incardination (see later), promote to one or more orders one of his subjects who is destined for the service of another diocese (Canon 969). A bishop (or major religious superior) has the right of excluding from orders any of his subjects without passing judgment and for secret reasons provided such reasons are those mentioned in the Canons. But recourse—which does not suspend the decision and distinct from an appeal proper—to Rome is possible (Congregation of the Council for seculars, or else to the superior-general when a provincial has given the decision (Canon 970). No one can be forced to accept ordination nor be kept back from it if he is canonically suitable.

As we have already seen candidates for Holy Orders must, as a rule, spend at least the four years demanded for theological studies in a seminary (Canon 972).

Conditions Required by Law

The intention of receiving the priesthood at a later date and a solid expectation that the candidate will be able to exercise it in a worthy manner are conditions now demanded for reception of the tonsure. Formerly and for many centuries a person might remain for years, or even for life, a tonsured cleric, cleric in minor orders, sub-deacon or deacon: and if this custom had in fact disappeared before the Code, there was nothing

against it in the law: but nowadays a cleric cannot be compelled to receive orders higher than the orders he already possesses, and a bishop cannot even prohibit anyone from exercising orders already received, without a canonical or grave reason (Canon 973).

A candidate for orders must have been previously confirmed, but St. Alphonsus considers this only a light obligation. The Code does not determine exactly the age required for reception of the tonsure and minor orders, but it lays down that the tonsure must not be given before theological studies are begun (Canon 976 §1). Up to the sixth century minor orders and especially the lectorate were given to children; the Council of Trent and Benedict XIV were content to specify the age of seven for reception of minor orders as well as the tonsure. The sub-diaconate must not be given before completion of the twenty-first year, the diaconate before completion of the twenty-second year and the priesthood before completion of the twenty-third year (Canon 975). A bishop must be thirty. From the fifth to the twelfth century, twenty-five years was the age for the diaconate and thirty for the priesthood. The present requirements as to age were settled by the Council of Trent. Any one who through his own fault (*malitiose*) receives an order before the canonical age is *ipso facto* suspended from the said order (Canon 2374). Bishops generally have power, in their faculties, to dispense up to one year in the case of the priesthood. It is unheard of for the Holy See to allow anyone to receive the sub-diaconate before the required age, rare for it to dispense for the diaconate, but common enough for it to allow the priesthood to be received before the completion of the twenty-fourth year. Moreover, it will be observed, as we shall see, that a certain period of theological study is required before the reception of every major order. In the matter of knowledge required for ordination, the Council of Trent

simply demanded the knowledge necessary for the exercise of the order to be received and for the priestly ministry. The Code lays down precisely that the tonsure may be received only after the beginning of theological studies, the sub-diaconate at the end of the third year of theology, the diaconate at the beginning of the fourth year, and the priesthood in the middle of the fourth year of theology (Canon 976). In addition the Code has determined the theological course (Canon 1365): see the earlier chapter on seminaries.

The hierarchy of sacred orders in order to provide a sufficient preparation for the ministry must be climbed step by step and without undue haste; hence arises the necessity in each case of the reception of minor orders and the strict observance of certain intervals or delays between the different ordinations. These two requirements rest on a most ancient tradition. As far back as 343 the Council of Sardica condemned in Canon 13 ordinations *per saltum*—where one or more steps in the clerical hierarchy were omitted. Innocent I and Zosimus renewed the prohibition in the fifth century and starting from the ninth century it was confirmed by severe sanctions. The Code, therefore, simply recalls (Canon 977) the principle and its absolute character, and renews in Canon 2374 the suspension levied by the Constitution Apostolicae Sedis (1869) against those who, in receiving orders, maliciously omit a lower step in the hierarchy. The discipline as to intervals is no less ancient and goes back to the Council of Sardica, which, by Canon 13, prohibits a layman from being consecrated bishop if he has not previously exercised for a considerable period the functions of lector, deacon and priest in such a way that his faith and Christian life are beyond question (Bruns, Vol. 1, p. 99). The two Popes, Siricius and Zosimus approved and renewed this decree as well as the decree relating to ordinations *per saltum* (Siricius,

Letter 1 to Himerus of Tarragona in 385, No. 13-14. P.L. Vol. XIII, c. 1142; Zosimus (417-418), Letter XXXVII to Felix of Nursia, P.L. Vol. XX, c. 671). The Code leaves it to the bishop's discretion to decide the time which shall elapse between the tonsure and the order of porter, as well as that between the different minor orders; it imposes an interval of a year between the order of acolyte and the subdiaconate, and an interval of three months between the subdiaconate and diaconate as well as between the diaconate and priesthood (Prior to the Code the two last intervals were a year each).

Justice and the dignity of the ecclesiastical state demand that no cleric should be ordained without having the means of living suited to his condition. This is provided by a canonical title which guarantees such means to the clergy in a stable manner. The meaning of the term "*titulus*" in canonical language has undergone considerable development. When peace was restored to the church by Constantine, the buildings used for Christian worship were made known to the public externally by a title—an inscription bearing the names of their founders or of the martyrs to whom they were dedicated, or else a cross. Afterwards the word "title" served to signify the building itself, at least in certain cases. At the beginning of the fifth century, Pope Innocent I mentions the titles of the Roman churches where the *fermentum* (a fragment of the host consecrated by the Pope) is preserved. P.L. Vol. XX, c. 556. Since a man was ordained with a view to serving a certain church clerics were said to be titulars (*titulati*, *praetitulati*) of a specified church, clerics became priests or deacons on a title, *ad talem titulum*, *ad titulum* (cf. Council of Meaux (845), Canon 52, Mansi, Vol. XV, c. 831; Council of Clermont (1095) Canon 13, ibid. Vol. XX, Col 817). The living of the clerics belonging to a certain church title was assured en bloc by the revenues of such church. When

the discipline of benefices was created in the ninth century, and ecclesiastical functions were assigned according to the quota determined for each of them, the title became a prebend—the income attached to a benefice (Council of Clermont (1095), Canon 12, Mansi ibid.). The Third Lateran Council (1179) in Canon 5 directed penalties against a bishop ordaining a cleric without a title, ie., without a benefice, and added that such a bishop would have the obligation of maintaining a cleric so ordained if he had no patrimony (Mansi, Vol. XXII, Col. 226). It was concluded, going beyond the intention of the Council, that patrimony could be a title and Innocent III gave legislative confirmation to this opinion (Decretal of 1208 to the Archbishop of Besançon in the Decretals, Book III, Title 5 de Praebendis).

The Council of Trent admits these two titles of benefice and patrimony (Sess. XXI, Cap. II de reformatione) in addition to the title of pension, the pension being secured on the income of a benefice (ibid.). For religious maintained by their convents, there was the title of religious profession or poverty restricted by Pius V solely to professed regulars by the Constitution "Romanus Pontifex sacrorum" (14th October, 1568), but which had been for some time already in existence.

In religious Congregations which are not orders, there is consequently the analogous title of the common table (*mensae communis*) or of the Congregation. When Propaganda at Rome had reorganized the foreign missions and assured their resources there was the title of the mission, the order or missionary society having a cleric ordained for the missions, undertaking to guarantee his decent sustentation (Urban VIII, Constitution Sacrosanctae, April, 1631). In South America, custom introduced the title of administration, in virtue of which a man was ordained for the administration of a church

in a specified diocese to be maintained by its income; the Congregation of the Council admitted its lawfulness on 21st June, 1879. Finally in France, before the Code, it was common to ordain on the twofold and tacit condition that the person ordained should devote himself to the service of a certain diocese and that the bishop of that diocese would ensure his maintenance.

The Code first of all mentions the titles of benefice, patrimony and pension, which in the pre-code legislation were common law titles, and specifies that each of them must be of such a nature that an ordained cleric is guaranteed a decent living: it wisely adds that it is the duty of the Ordinary to determine in detail the regulations applying to these different titles (Canon 979). Since all clerics must have a title, a cleric who loses his must provide himself with another, unless, in the bishop's judgment, the cleric has sufficient income from some other source. Whosoever has without an apostolic indult knowingly ordained or allowed to be ordained a subject without a canonical title is bound to provide an alimentary pension for the subject if he is without means of support, until he has otherwise provided for his maintenance and the obligation passes to his successors; any agreement made between a bishop and a cleric without a title whereby the latter is to give up in advance his right to any alimentary pension is null and void (Canon 980).

The present legislation goes further and gives universal legal validity to ancient titles which were only matters of particular law, the result of custom, apostolic indults or local legislation; but normally these titles should be used only if the preceding ones are deficient. The title of service of the church corresponds at the same time to the French custom, to the title of administration and to the law of the Eastern Church which has remained the same as that of the Council of Chalcedon

(ordination on the title of a particular church which ensures the maintenance of the cleric promoted on that title).

The title of the mission is valid only for territory administered by Propaganda, other regions being governed by the common law; a decree of the Sacred Consistorial Congregation of the 29th July, 1909, had already substituted the title of service of the church for the title of the mission for countries which the Constitution "Sapienti Consilio" (29th June, 1908) had transferred from Propaganda to its own authority, e.g., the United States of America. The titles of service of the church and of the mission are acquired only by taking an oath of perpetual service of a diocese or mission under the authority of the Ordinary governing one or other, but on the other hand this Ordinary must give to the person who thus binds himself a benefice, office or subvention which will allow him a decent living.

For those religious who are termed regulars, i.e., who take solemn vows (vows with full legal effects), religious profession is itself their title, which, in current language, is also called the title of poverty. Similarly religious who take simple perpetual vows retain their old titles of "common table" (*mensae communis*) of the congregation or analogous titles. All other religious, i.e., those who take simple temporary vows are assimilated to secular priests as far as regards title for ordination, as is also, generally speaking, the case in everything else pertaining to ordination (Canon 982). The title can be demanded only at the reception of the sub-diaconate, since Canon 980, which insists on its necessity, deals with clerics in sacred orders (*in sacris*). Any Ordinary who promotes to major orders a cleric without a title incurs suspension (reserved to the Holy See) from conferring orders for one year (Canon 2373).

Irregularities and other Impediments

It is a matter of importance for the efficiency of the ecclesiastical ministry that all persons who, through their own fault or even through no fault of their own, are in such a condition that there is a risk of the faithful being disgusted or inspired with a certain antipathy should be debarred from ordination. Hence irregularities and impediments are constituted which prevent the reception or exercise of Holy Orders. The Code has definitely established the distinction between an irregularity and a mere impediment. Irregularity is an obstacle to ordination which is of its nature perpetual; e.g., a one-armed man will remain in that condition all his life and is therefore, irregular. On the other hand an impediment is of its nature temporary, e.g., a neophyte is affected by an impediment which excludes him from orders, but by mere efflux of time he ceases to be a neophyte. From the apostolic age care has been taken to specify the cases of unsuitability or unworthiness which bar a man from the ministry of the altar. In fact the following passage occurs in the 1st Epistle of St. Paul to Timothy: "It behoveth, therefore, a bishop to be blameless, the husband of one wife, sober, prudent, of good behaviour, chaste, given to hospitality, a teacher: not given to wine, no striker but modest, not quarrelsome, not covetous: but one that ruleth well his own house, having his children in subjection with all chastity. But if a man know not how to rule his own house, how shall he take care of the church of God? Not a neophyte: lest, being puffed up with pride, he fall into the judgment of the devil. Moreover, he must have a good testimony of them that are without: lest he fall into reproach and the snare of the devil. Deacons in like manner: chaste, not double tongued, not given to much wine, not greedy of filthy lucre: holding the mystery of faith in a pure

conscience. And let these also first be proved: and so let them minister, having no crime" (iii, 2-10). The Epistle to Titus contains almost identical recommendations: "For this cause I left thee in Crete: that thou shouldest set in order the things that are wanting and shouldest ordain priests in every city, as I also appointed thee: if any be without crime, the husband of one wife, having faithful children, not accused of riot or unruly. For a bishop must be without crime, as the steward of God: not proud, not subject to anger, not given to wine, no striker, not greedy of filthy lucre: but given to hospitality, gentle, sober, just, holy, continent: embracing that faithful word which is according to doctrine, that he may be able to exhort in sound doctrine and to convince the gainsayers" (i, 5-9). Subsequently the Church developed this first list of irregularities and impediments. The Council of Nicaea (325) excludes from orders the mutilated, neophytes, great criminals, the *lapsi* (those who had apostatized during persecutions, Canons 1, 2, 9 and 10). The Apostolic Canons (2nd half of the fourth century) debar from the episcopate, priesthood and all ecclesiastical office those who, after baptism, have married twice or have lived in concubinage (Canon 16); those who have married a widow, a divorcée, a courtesan or an actress (Canon 17); those who have contracted successive marriages with sisters, or have married a cousin (Canon 18); voluntary eunuchs (Canons 20 and 21); the blind, the deaf (Canons 76 and 77); and slaves who have not fully gained their freedom. Other lists are found in a letter of Pope Innocent I (402-407) to the Bishop of Nocera, P.L. Vol. xx, c. 603-605; in a letter of Pope Gelasius (492-496) to the bishops of Lucania, Brutium and Sicily, P.L. Vol. LIX, c. 49 and following; and in Canon 19 of the Fourth Council of Toledo (633), (Mansi Vol. x, c. 624-645). (This last list is the longest of them all.) In ancient ecclesiastical

times there were impediments to orders depending on circumstances of time which no longer exist, e.g., that which affected the *curiales* (members of the *curia* or local administrative council); these individuals guaranteed by their personal fortunes the collection of taxes which was somewhat uncertain from the fourth century on, with the result that the functions of the *curiales* were avoided, since they were often imposed by the mere fact of belonging to a certain family or having private means: one method of escaping such a burden was to take Holy Orders and so the *curiales* were prohibited from joining the clergy and the Church sanctioned this prohibition (cf. Innocent I and Gelasius). In the seventh century the majority of the irregularites and impediments to orders were in existence, but it was some centuries before their canonical theory was worked out. This did not take place until the twelfth and thirteenth centuries. The term "irregularity" appears for the first time in Innocent III (*Decretals*, Book I, Title IX, cap. X), at the beginning of the thirteenth century. As for the distinction between irregularities arising from defect (*ex defectu*) and those arising from crime (*ex delicto*), it occurs for the first time in the Summa on the Decretals of Godfrey of Trani in 1241 (cf. Fr. Gillmann, *Zur Geschichte des Gebrauches der Ausdrucken Irregularitas und Irregularis*, *Mainz* 1911).

In the present discipline, irregularity is sharply distinguished from an impediment from receiving orders by its perpetual character as explained above; Canon 983 gives no other definition of irregularity than that it is a perpetual impediment. Impediments arising from defect (*ex defectu*)—the absence of some quality necessary to the dignity of the ecclesiastical office which implies no fault in the person who is barred—are distinguished from impediments arising from crime which make a man absolutely unsuitable as the result of some fault

which is serious and personal. But both kinds of impediment are, above all, a means of ensuring universal respect for the clergy, and irregularities by defect have not themselves, as such, a penal character, especially since the Code. Nevertheless, since they constitute a restriction of a right they must be interpreted strictly, and in particular nothing is to be treated as an irregularity or fault other than those which are enumerated by law (Canon 983). An irregularity prohibits the exercise of orders already received as well as the actual reception of orders (Canon 968).

There are seven irregularites by defect:

(1) Illegitimacy.—Unless there is legitimation by subsequent marriage of the parents—a legitimation which is possible only, if at the moment of conception, pregnancy or birth, the parents were capable of contracting a valid marriage (Canons 984 and 1116); solemn profession in a religious order exempts itself from this impediment; if it is a question of being consecrated bishop subsequent legitimation does not apply (an innovation introduced by the Code, Canon 331 §1 No. 1).

(2) Mutilation and bodily deformity, only if they prevent the service of the altar from being carried out with becoming security and decorum (by these words the Code puts an end to many old controversies); there can no longer be any dispute about the canonical eye—the left eye—blindness in which, before the Code, constituted an irregularity according to most authors; mutilation and deformity must be more serious to prevent the exercise of an order than its reception, and in the first instance cannot prohibit the accomplishment of a ceremony which they do not really hinder; complete blindness in both eyes, complete deafness of both ears, and the loss of both arms are certainly irregularities.

(3) Epilepsy, insanity and diabolic possession, even if they are past; but if they supervene on the reception of orders the ordinary can dispense if it is certain that they have disappeared (this is the old "*defectus animi*" defect of the soul).

(4) Bigamy—which results from two or more successive marriages (the old irregularity *ex defectu sacramenti*—by defect in the sacrament of marriage); interpretative bigamy, which is the result of an attempted marriage with a person already married or bound by a solemn vow, having become an irregularity *ex delicto* (Canon 985 §3); and "apparent bigamy" contracted by the fact of a marriage with a woman who already had a husband now no longer exists: actual bigamy exists only if there has been a consummated marriage on both occasions; it is incurred even if the marriages took place before baptism, although, in theory, an irregularity can be contracted only after baptism inasmuch as ecclesiastical law binds only baptized persons.

(5) Legal infamy, i.e., defined by the law itself.

(6) Sentence of death passed by a judge—which does not extend to members of the jury nor to the judge himself who pronounces the death sentence in countries where it is never actually carried out (e.g., Belgium); in the present law, the public prosecutor and voluntary witnesses, in a case where the death penalty is subsequently awarded, are no longer irregular.

(7) The office of public executioner and his voluntary and immediate assistants—an irregularity which does not include soldiers detailed to make up a firing party nor workmen who erect a scaffold (irregularities 6 and 7 are the old irregularity "*ex defectu lenitatis*"—defect of gentleness).*

*Before the Code, Cardinal Gasparri was of the opinion that a soldier who killed one of the enemy did not incur the irregularity

Irregularities arising from crime are also seven in number:

(1) Apostasy from the faith, heresy and schism; since, canonically, heresy and schism presuppose grave fault, dispensation is granted for safety's sake—*ad cautelam*—only to those who have belonged, in good faith, to any sect.

(2) Baptism knowingly received from non-catholics; since the word "knowingly" is used, this new irregularity, unknown before the Code, does not affect infants; the case of extreme necessity is excluded and moreover it is a question of non-Catholics and not of the unbaptized (at least that is a probable opinion).

(3) Attempt at marriage—even merely civil marriage—either on the part of a man who is already married, in sacred orders, or bound by religious vows, even if such vows are simple and temporary (this last detail is an innovation), with a woman who is already married or bound by the same vows.

(4) Wilful homicide, or abortion, which has taken effect and co-operation therein; in the first case there must obviously be grave fault which excludes lawful self-defence.

(5) Mutilation of one's self or someone else and attempted suicide; for mutilation there must be grave fault—lawful self-defence and the case of war are exceptions—and the cutting off a bodily member strictly so-called—not, e.g., a nose or an ear: castration is understood by this.

***ex** defectu lenitatis* if he was a conscript and therefore forced to fight. "It must be admitted that in the case of conscripts forced to fight as is the general rule in European countries this *defectus lenitatis* is hard to understand" (De Sacra Ordinatione No. 450). Hence the decree of the Consistorial Congregation of 25th October, 1918, on the subject of clerics returning from the War, orders that such clerics must be dispensed from the irregularity only for safety's sake "*ad cautelam*."

(6) The practice of medicine or surgery by clerics when it has been prohibited and death ensues through their fault.

(7) Exercise of a major order by a layman or cleric who has not received the said order or has been prohibited by canonical punishment from doing the duties of such order—this refers to any sacred function carried out with all the vestments proper to the order (Canon 985). In general, irregularity *ex delicto* is incurred only by a grave fault committed after baptism (except in the case of baptism received from non-Catholics), constituting an external act whether it be public or secret (Canon 986).

Impediments which are not of a perpetual character are the following:

(1) Birth from non-catholic parents so long as they remain in their error—it is a question of father and mother but not of grandparents, and the impediment is incurred even if it is a mixed marriage by dispensation (Commission for the interpretation of the Code, 16th October 1919 and 14th July, 1922); the death of a heretical parent or parents removes the impediment; 'non-Catholics' does not mean unbaptized persons (Congregation of the Council: Richter, Council of Trent, p. 339, No. 3); (before the Code this impediment was an irregularity).

(2) Marriage.—Rome dispenses from this impediment, only if the wife gives free consent to her husband's ordination, and she must subsequently live in such circumstances that the practice of continency will not be too great a burden for her. (This is the old irregularity by default of conjugal freedom—*ex defectu libertatis* —which did not exist in Rome until the eighth century, as we have already seen.)

(3) Any office or employment which entails the rendering of accounts (formerly this was also an irregularity *ex defectu libertatis*).

(4) Slavery, strictly so called, from which one is not yet released, and, therefore, not mere serfdom (which is the most ancient form of the *defectus libertatis*).

(5) Military service, so long as one is actually, or will be, obliged to do it (Commission for the interpretation of the Code, 3rd June, 1918), except service in the medical corps and when one is on reserve; only absolute freedom from liability to serve exempts from this impediment.

(6) The fact of being a neophyte, until the Ordinary considers that the faith of the candidate for orders has been sufficiently tested. (This is the old irregularity of defect of faith (*ex defectu fidei*) from which dispensation was granted only by apostolic authority.

(7) Infamy in fact, or loss of reputation among honest and serious minded people, by reason of a crime actual or suspected or of bad character (the old irregularity *ex defectu famae*—default of good name) as long as it continues in the judgment of the Ordinary (the initiative left to the Ordinary in numbers 6 and 7 is an innovation in the Code) (Canon 987).

Ignorance of irregularities or impediments does not excuse from them, for they are not censures, i.e., punishments imposed primarily for the good of delinquents, but measures taken for the general good and honour of the clergy (Canon 988).

Impediments and irregularities are as numerous as the causes thereof but are not multiplied by the number of times, or if the same cause from which they result is repeated, except in the case of voluntary homicide (Canon 989).

Impediments and irregularities are dispensed by the Ordinary, the confessor, or Rome as the case may be.

The Ordinary (bishop, person who has the governing of a separate territory, e.g., prelate *nullius* or religious superior) intervenes in all occult cases personally, or through his subordinates, except in the cases of voluntary homicide and abortion, and in matters which have been already carried to an ecclesiastical tribunal (Canon 990 §1). The confessor can dispense only occult irregularities in urgent cases when recourse cannot be made to the Ordinary and which are accompanied by imminent danger of a wrong being done or of grave infamy being incurred, and that only in respect of the exercise of orders already received (Canon 990 §2). In applying for dispensations to the Holy See, all the irregularities and impediments incurred must be indicated under pain of nullity when the omission has been made in bad faith or when it is a question of voluntary homicide, abortion, and cases already carried to an ecclesiastical tribunal. A dispensation once granted does for all major orders, but there must be a fresh intervention of the Holy See if the cleric in question is made a cardinal, bishop, abbot or prelate *nullius* or major superior of an exempt clerical religious order (Canon 991). Dispensations granted outside of the tribunal of penance must be committed to writing and inscribed in a secret register (Canon 991 §4).

(4) *Ordination*

PRELIMINARIES

Whoever is desirous of being ordained must notify the bishop or his deputy within a suitable time (Canon 992).

Testimonial letters, which are distinct from the dimissorial letters mentioned above, are necessary. They comprise:

(1) Attestation of the last order received, or, if it is a question of receiving tonsure, certificates of baptism and confirmation.

(2) Certificate that the necessary studies have been completed.

(3) Certificate of character and good conduct from the superior of the seminary or from the priest to whom the future cleric has been entrusted outside the seminary.

(4) Certificate from the ordinary of every diocese where the candidate has lived long enough to contract an impediment, i.e., three months if on military service and six months if not, after the age of puberty: (this is the general law, but a bishop can demand testimonials covering a shorter period or for the years preceding puberty); this certificate must be renewed if, after it has been given, a new stay of the appointed duration has been made; if it is impossible or very difficult to get such certificate it may be supplied by the candidate's oath.

(5) Certificate from the major superior of a religious who is to be ordained, if the latter is subject to the rules governing secular priests in the matter of ordination. For religious who do not come under such rules, the dimissorial letters of their superiors must be accompanied by testimonials in compliance with the conditions laid down in the canons for all ordinands (Canons 993-995).

The ordination should be preceded by an examination on the duties annexed to the order about to be received, and on theology. The bishop decides the programme and conditions (Canon 996).

Normally, it is the candidate's own bishop who arranges for the examination, but this duty may be entrusted to any colleague whom the bishop has asked to ordain one of his own subjects. The ordaining bishop, if he is not the candidate's own bishop, may accept a certificate that the examination has already been passed,

but he is at liberty to satisfy himself as to the ordinand's knowledge and to refuse to ordain him if he is clearly unfit.

Normally banns must be proclaimed before every promotion to a sacred order. By common law this is done in the parish of the ordinand—where he has a domicile or quasi-domicile—(in this respect he may be dependent on several parishes) unless it is a question of religious taking perpetual vows even if such vows are simple. The Ordinary can dispense from this for a just cause, have them called in a church other than the parish church, or substitute for them a notice posted up for at least two days which must include a holiday of obligation. This publication is made at High Mass on a holiday of obligation or else at some other hour, or on some other day, when the faithful are present in large numbers. If the candidate is not ordained within six months, the banns are renewed. From this there results an obligation, incumbent on everyone, of informing the Ordinary or parish priest of impediments which may be known to them (Canons 998-999). The Church has, at all times, made enquiries from the faithful whether those whom she is promoting to Holy Orders are worthy. This appeal to the testimony of the people was called the scrutiny, up to the epoch of the Decretals. The following extract shows how it was done in the Roman rite from the fifth to the eighth century: "On the Wednesday and Friday of Quarter Tense (the ordination took place on the Saturday) at the station masses said at St. Mary Major and at the Holy Apostles, in presence of the ordinands (future deacons and priests), a lector or notary mounted the ambo and announced their names to the faithful, exhorting any one who had anything to say against them to make it known without fear, and at the same time to remember their frailty. The formula thus pronounced has been preserved in the present

ceremony of ordination, in which it is now only a form devoid of any practical importance" (*Tixeront L'ordre et les ordinations*, Paris 1925, p. 131). In the Gallican rite of the same period, the appeal to the people was made by the bishop at the very beginning of the ceremony and answered by acclamation "Dignus est"—he is worthy—at least unless they protested, which was a rare event (ibid., p. 142).

In addition to the banns, the Code orders the parish priest to make enquiries, and the result of such enquiries may be indicated on the certificate of publication of banns. The Ordinary is at liberty to make personal and even secret investigations (Canon 1000).

A retreat of at least three days is prescribed before reception of the tonsure and minor orders, and of at least six days before major orders (Canon 1001).

The ordination rite as laid down in the Roman Pontifical or in other approved liturgical books must be sedulously carried out without any omission or change (Canon 1002). The ordaining bishop must himself celebrate the ordination mass, and Rome is extremely strict about observance of this rule (Canon 1003). A member of an Eastern rite, who has received certain orders in his own rite and is subsequently to be ordained to higher orders in the Latin rite, must first of all receive those orders which are omitted by the Eastern Church; (the Eastern Church, generally speaking, omits the orders of porter, exorcist and acolyte) (cf. Canon 1004). All the ordinands must receive Holy Communion.

Time and Place of Ordination

While the episcopate may be conferred on a Sunday or feast of the Apostles, major orders cannot, in theory, be given except on the Saturdays of Quarter Tense and the Saturdays before Passion Sunday and Easter; but for a grave reason the bishop may choose for this pur-

pose any Sunday or holiday of obligation (even if it is suppressed, as such, by local legislation). Formerly an indult was necessary in order to do this. No particular day or hour is specified for conferring the tonsure. Minor orders are given on a Sunday or feast of double rank, but only in the morning, and the ceremony must take place within mass (Canon 1006). The cathedral is the normal place for ordination, but for a just cause (the Code does not say a grave cause) the bishop may ordain in some other church and even in his private chapel or in that of the seminary or religious house. Tonsure and minor orders may be given, if necessary, in private oratories (Canon 1009).

Proof of ordination is provided for by inscription in a special register in the diocesan office, an official certificate given to the ordained cleric, and insertion in the margin of the baptismal register (Canons 1010 and 1011).

CHAPTER III

THE ATTACHMENT OF CLERICS TO A DIOCESE

History—Present discipline—Procedure in and conditions for incardination and excardination.

(1) *History*

The Church has always been opposed to clerics wandering from place to place without being attached to a fixed diocese, be they "acephalous" (clerics without a superior or head), as the Greeks called them, or *vagi* (wanderers), according to the Latins. At the very moment of ordination every cleric was, in olden times, inscribed in the canon of some particular church. From this is derived the first meaning of the term *canonicus*—canon. "By canons, were meant all holders of benefices who shared in the income and distributions of the Church and who for that purpose were inscribed *in canone*, i.e., in the register of the Church" (*Thomassin Ancienne et Nouvelle discipline de l'Eglise*, Bar-le-Duc edition, Vol. II, p. 498). The Council of Nicea (325) mentions in Canon 16 this canon of the churches, and the Council of Auvergne (535) in Canon 15 uses the term *canonicus* in the sense just indicated (Bruns *Concilia*, Vol, II, p. 190) (cf. Third Council of Orléans 538). It was also said that such and such a cleric was a cardinal cleric of some particular church, that is to say he was attached to it as a door is attached to its hinge (in Latin, *cardo cardinis*). Clerics were ordained not "absolutely" (*absolute*, i.e., with no special destination) but

with the view of exercising their ministry in a certain place, in some particular church (in the city, in the country, at the tomb of a martyr, etc.). This was the decision of the Council of Arles in 314, Canon 21, the Council of Nicea (325), Canon 15, the Council of Antioch (341) Canon 21, the Council of Sardica (343) Canon 1 and the Council of Chalcedon (451), which is expressed in Canon 6 as follows: "No one must be ordained 'absolutely,' neither priest, deacon, nor cleric, unless there is assigned to him in particular, a town or village church, a *martyrium* or a convent, otherwise the ordination will be worthless and the cleric so ordained cannot exercise his ministry anywhere." Acephalous clerics were known in the middle ages as well, and such clerics were equally condemned at this epoch as in the first century of the Church (cf. St. Isidore of Seville who "in the seventh century laments the multiplication of this 'sordid and infamous' type of cleric"; *De ecclesiasticis officiis*, Book II, Cap. v. Council of Malfi, 1089. Canon 2): but from the beginning of the twelfth century ordinations on the title of patrimony and the conferring of simple benefices without the obligation of residence withdrew a large number of ecclesiastics from episcopal authority. The Council of Trent made an effort to restore the discipline of the Council of Chalcedon by decreeing that no one must, in future, be ordained without being attached to some church or pious place where he would have to exercise his functions in such a manner as to prevent him from wandering at large (Session XXIII, Canon 16 de ref.). But this order was for long countered by custom.

It is practically only in our own times that the rule has become general of ordaining a cleric for a particular diocese, order, or congregation. The Code has definitely adopted this rule, which merely reproduces in part the rule of the Council of Chalcedon, since the latter forbade

the ordination of clerics not merely without a fixed diocese but further without a particular church in a diocese. As a reminder of the primary meaning of the term cardinal, attachment to a diocese is called incardination, detachment from a diocese being excardination.

(2) *Present discipline*

Every cleric must belong to a diocese, order or religious congregation; the existence of wandering clerics (*vagi*) cannot be tolerated (Canon 111 §1).

Incardination takes place by the very fact of receiving the tonsure, which makes the tonsured cleric incardinated in the diocese for whose service he has been promoted (Canon 111 §2).

(3) *Procedure in incardination and excardination*

This procedure had already been definitely settled by the decree "a primis" of the Congregation of the Council on 20th July, 1898, with the object of putting an end to the following type of abuse: If a bishop refused to ordain a subject, the latter would ask for excardination and have himself ordained in a diocese where he was almost unknown, then he would return to the diocese whose bishop had refused him ordination and demand some position in the diocese.

Excardination of a cleric from his diocese and his incardination in another diocese go hand in hand. For it two formalities are required, the first of which takes effect only through the second:

(1) Letters signed by the original ordinary granting perpetual and absolute excardination.

(2) Letters signed by the ordinary of the diocese the cleric wishes to join granting correspondingly perpetual and absolute incardination (Canons 112 and 116).

In this way is avoided the disadvantage of having an undesirable subject returning to his first diocese after ordination elsewhere, without any adequate guarantee. A vicar-general can issue the said letters only by virtue of a special mandate, and a vicar-capitular only after the see has remained vacant for a year and with consent of the chapter (Canon 113).

The Code provides for two special cases where something equivalent to the exchange of letters laid down in Canon 112 takes place:

(1) Where a cleric gets a benefice, with the obligation of residence, from an Ordinary other than his own, after having obtained written consent from his own Ordinary, or written authority definitely to leave his diocese—a consent and authority which are necessary under pain of nullity (Canon 114, which is an innovation in the Code), and

(2) The case of perpetual religious profession, whereby a cleric completely abandons his diocese (Canons 115 and 585), which presupposes that, at the time of the novitiate, such cleric, if already in major orders, has not acted without consulting his Ordinary, or against his will if he was considered indispensable to his diocese (Canon 542, No. 2); in this case recourse to the Ordinary does not bind under pain of nullity.

Conditions for Excardination and Incardination

Just reasons are required for lawful excardination: health, family reasons, work already done in another diocese, etc. It has no canonical effect until it has been followed by lawful incardination in another diocese, of which fact the bishop of the first diocese must be informed without delay (Canon 116).

For incardination it is necessary:

(1) That the subject to be incardinated be necessary or useful to his new diocese and provided with a canonical title.

(2) That the new ordinary has made sure that the excardination which has to precede the incardination is authentic, and has good references concerning the cleric who is to be incardinated, and

(3) That this cleric takes an oath to place himself always at the service of the diocese to which he is being affiliated (Canon 117).

PART III

RIGHTS AND DUTIES OF CLERICS

CHAPTER I

RIGHTS AND PRIVILEGES OF CLERICS

Various rights—Immunities—Privilege of the canon—Privilege of court—Exemption from military service—Clerics and public duties—Privilege of competence—Acquisition and loss of immunities.

(1) *Various rights*

Clerics alone share in the power of order and of jurisdiction (Canon 118). Nevertheless the Pope may give or allow to laymen a certain power of jurisdiction. Laymen, especially the heads of states, in exceptional circumstances have sometimes, as a matter of fact, enjoyed prerogatives implying a certain jurisdiction and that by the acknowledgment of the Church if she did not actually grant it by explicit concession. An ordinary tonsured cleric already possesses certain rights, viz., the name and immunities of a cleric, attendance in choir vested in surplice, communion at the altar and the office of chaplain at a bishop's mass.

(2) *Immunities*

Besides the monopoly of the powers of order and jurisdiction, clerics enjoy a certain number of immuni-

ties. An immunity may be defined as a right in virtue of which places, things and ecclesiastical persons are freed or exempted from some burden or common obligation. It may be local, real or personal according as it affects a place, thing, or person. This is obviously the place to deal with personal immunities viz., those which are attached to the very person of a cleric.

(3) *Privilege of the canon*

The privilege of the canon is so called because Canon 15 of the Second Lateran Council (1139) extended it to the clergy of all the churches. From the ninth century ecclesiastical law (Council of Mainz 847, Council of Ravenna, 877, etc.) directed particularly severe penalties against those who attacked the clergy. The laws of the Barbarians (Ripuarian Law, Salic Law) had preceded it in this respect. When, in the twelfth century, theories against the authority of the clergy were propagated by agitators like Arnold of Brescia, more solemn sanctions became necessary against these attacks which were becoming very common. They were passed by the Councils of Clermont (1130), Rheims (1131), Pisa (1135) and finally by the Second Lateran Council in 1139. This last by Canon 15 imposed excommunication *ipso facto* and reserved to the Pope on those who did violence to clerics or monks. This is the famous Canon "*Si quis, suadente diabolo.*" "If anyone, at the instigation of the devil himself, has committed the sacrilegious act of laying violent hands on a cleric or monk, let him remain bound by anathema, and let no bishop presume to absolve him except in case of urgent danger of death, until he has made application to the apostolic Lord (the Pope) and received his instructions (on the conditions to be observed in giving such a one absolution)".

Many subsequent decrees narrowed down the meaning

of the Canon "*suadente diabolo*" while vigorously maintaining the principle enunciated therein. Before the Code, the Constitution "*Apostolicae Sedis*" (12th October, 1869), had amalgamated all these various decisions by inflicting an excommunication specially reserved to the Sovereign Pontiff on those who attacked cardinals, patriarchs, bishops, legates and nuncios, as well as their accomplices, and an excommunication simply reserved to the Sovereign Pontiff on those who did violence to clerics and religious of both sexes (the second sanction did not apply to accomplices).

The present discipline concerning the privilege of the Canon is laid down in Canons 119 and 2343 of the Code. Canon 119 declares first of all the general principle that the faithful owe to the clergy respect suited to their dignity in the ecclesiastical hierarchy, then condemns as sacrilege every real injury (i.e., which consists of acts and not merely of words) inflicted on a cleric. Canon 2343 adds a sanction to the condemnation passed by Canon 119. The persons protected by it are clerics and religious of both sexes (Canons 614 and 490). By clerics is understood all tonsured persons, even if they are not provided with office or benefice, whether suspended, irregular, censured or degraded (cf. Canon 2303). Among religious are included for this purpose persons professed by simple temporary vows (Canon 488 §1), lay brothers (Canon 614), novices (Canon 614) and even those living a community life without having taken any vows at all (Canon 680). On the other hand Canon 2343 affords no protection to clerics to whom the wearing of clerical dress has been definitely forbidden (Canon 2304 §2), clerics reduced to the lay state by degradation, or even by some non-penal measure (Canon 213 §1, Canon 2305), clerics in minor orders who contract marriage (Canon, 132 §2), clerics serving as volunteers solely on their own initiative, even if they are doing so with the

intention of securing earlier release from their military obligations (Canon 141 §2), and clerics who after admonition persist for more than a month in not wearing clerical dress (Canon 136 §3). Religious are in the same position if they are secularized before receiving the tonsure or have been sent back to the world (Canons 640, 648 and 669 §2). Those affected by Canon 2343 are all persons who attack the clergy even if they themselves are clerics, with the exception of cardinals who incur censures only if they are expressly mentioned (Canon 2227) and *impuberes* who are always exempt from the said censures when they are declared to be incurred *ipso facto* (Canon 2230).

Accomplices come under the sanctions laid down in virtue of the general principle enunciated in Canon 2229 §3 when their complicity was necessary for the commission of the crime. Culpable ignorance does not excuse from the punishment because the Code does not use the expression "*suadente diabolo*" (at the instigation of the devil) which is found in the previous legislation and which, as well as the analogous expressions "knowingly," "with full knowledge of the case," etc., indicates that the legislator wishes to include those who feign ignorance, i.e., have kept it up in order to avoid a sanction the existence of which they vaguely suspect. It is, however, obvious that excommunication is not incurred if it is not known that the person attacked is a cleric. The act to which the sanction is attached is true violence which is reprehensible and implies bodily action. Lawful self-defence, injury and wounding through accident or even imprudence do not come under the penalty, as well as moral pressure or abuse of authority. Since only a mortal sin is punishable by a censure, the violence offered must be grave, at least in respect of the accompanying injury which is relative to the dignity of the person offended, or in respect of the restraint on liberty

in the case of imprisonment or banishment. Finally, there must be physical aggression; merely verbal injury even of the gravest character is not enough: it is a question of raising a hand in one way or another against a cleric. The scale of punishments in the Code for attacks on churchmen is more complicated than in the previous legislation. The Sovereign Pontiff is protected by an excommunication reserved in the most special manner to the Holy See—a new case where this, the gravest of censures, is incurred; connected with this excommunication is the stigma of *vitandus*, i.e., a boycott inflicted by ecclesiastical society on the guilty person, legal infamy and degradation (for clerics). If a cardinal or legate is attacked, the punishment is excommunication specially reserved to the Pope, together with legal infamy and deprivation of any benefices, offices, dignities, pensions and functions held by the aggressor. If the cleric is a patriarch, archbishop or bishop, the said excommunication is also incurred, but without the additional punishments; nor in the last two cases does the aggressor become a *vitandus*. Lastly, when it is a question of inferior clerics and religious the excommunication incurred is (since the Code) reserved only to the Ordinary.

(4) *Privilege of the court*

It is in particular because of the privilege of the court, whereby clerical cases are reserved for ecclesiastical tribunals, that non-Catholic jurists and historians have developed their theory of immunities as purely gratuitous concessions from the civil power. Loening, for example, argues as follows:

Constantine (probably in 318) promulgated a constitution which allowed every litigant to have recourse, in civil matters, to the bishop's court, even if the case had already been called before the civil judge (Theodosian

Code, Law 1 of Title 27, *De episcopali definitione*, Book 1). This was a grant of voluntary jurisdiction available for laymen as well as clerics, rather than the recognition of any special immunity for ecclesiastics, but nevertheless this measure allowed the latter to withdraw themselves from the authority of the secular judges.

The Constitution of 318 was renewed and made more exact in 333 (Theodosian Code).

In 398 Arcadius and Honorius limited Constantine's concession by requiring that parties must first of all be agreed before there could be recourse to the bishop, who thus became simply an arbiter, and that the bishop's sentence should be promulgated by the civil judge, the latter having, in addition, the obligation of ratifying it (Justinian's Code Book 1, Title 4, *De episcopali audientia*, Law 7). This decision applied only to the East and in 408 Arcadius, Honorius, and Theodosius the younger extended it to the West (Theodosian Code Book 1, Title 27, *De episcopali definitione*, Law 2). The Constitution of Constantine provided ecclesiastical authority with the occasion for claiming a more extensive privilege than the one it had been granted by imperial authority: the Council of Hippo (393) obliged clerics always to use the bishop's court, thereby changing a voluntary into a necessary jurisdiction, and declared that this court must be used for criminal as well as civil cases, while at the same time legislation admitted episcopal intervention only in civil cases (Canon 13, *Histoire des Conciles*, Héfélé, translated into French by Leclercq, Vol. II, p. 87). Possibly the African bishops foresaw the restrictions which would be made in 398 and 408 on the favours granted by Constantine and took the first step to reserve for themselves at least clerical cases.

The answer to Loening is that every power shows a tendency to represent as a gratuitous concession what is only the recognition of a right and to insist upon alleged

concessions especially in view of the system of authority which obtained in the Roman Empire. Moreover, the Church had, in the matter of justice and procedure, its own principle as expressed by S. Paul: "Dare any of you having a matter against another, go to be judged before the unjust and not before the saints? Know you not that the saints shall judge this world? . . . If, therefore, you have judgment of things pertaining to this world set them to judge who are the most despised in the church" (II Cor. vi, 1-4); and this principle she has always steadfastly maintained against barbarians unscrupulous in the exercise of justice and in the face of the Emperors, according to the evidence of the texts cited by the Decretal of Gratian: cf. Decretals of Gelasius at the end of the fifth century, of Pelagius (556-561), the Council of Mâcon (581) Canon 8, Decretal of St. Gregory, and in the East, Canon 9 of the Council of Chalcedon 451 (cf. Decretal of Gratian, Cause II, q.1.)

The Merovingians did not at first recognize the privilege of the court except in the case of bishops; Clothair II extended it to priests and deacons. After the anarchy of the eighth century, Charlemagne restored this immunity to full vigour.

In a general way the privilege of the court steadily gained ground from the tenth century on. The struggle of St. Thomas a Becket (+1170) against Henry II of England had apparently a great influence in this matter and inspired the celebrated decretal "*At si clerici*" (Decretals, Book II, Title 1, Chapter IV, Alexander III (1159-1181): cf. Génestal *Thomas Becket et la décrétale At si clerici. Transactions of the International Congress of the History of Religions*, Paris 1923, Vol. II pp. 330-343).

In the thirteenth century the privilege of "clergie," as it was then called, reached its zenith, at least with regard to state recognition. In the fourteenth century the struggle between Boniface VIII and Philippe-le-Bel

inaugurated an era of mutual distrust in the relations between the religious and civil powers, and the privilege of the court became more and more grudgingly recognized by the legists while still remaining largely in force until the end of the ancien régime. In theory the Popes remained faithful to this tradition while consenting tacitly or expressly to more than one adjustment in practice. From the very beginning of this period Boniface VIII laid down with his usual strictness the general principle from which all immunities, including the privilege of the court, are derived. "Both churches and ecclesiastical persons as well as their goods are exempt from the exactions of secular persons not only by virtue of human law but also by virtue of the law of God" (Cap. IV *de censibus*, Book III, Title 20 in the Sext). The Bull "Coenae", which was read on Maundy Thursday from the end of the fourteenth century (the most ancient one known is that of Gregory XI in 1372, but this presupposes previous texts) and which was a catalogue of censures, contained under No. 15 an excommunication directed against "judges who cite, cause to be cited, or bring directly or indirectly under any pretext whatsoever, clerics before their tribunals." The Council of Trent recalls in turn "the immunity of the Church and ecclesiastical persons as established by the command of God and canonical sanctions " (Session XXIII, Canon 20 de reformatione).

The upheaval produced by the French Revolution did not make the Holy See abandon her claims. The Syllabus condemned the following propositions: "the immunity of the Church and of ecclesiastical persons has its origin in the Civil Law (No. 30); the ecclesiastical court for temporal processes, civil or criminal, against clerics, should be abolished even without consulting the Church (No. 32)" The Constitution "Apostolicae Sedis" renewed the censure contained in the Bull

"Coenae," under the form of an excommunication *latae sententiae* (incurred by the very fact) levied against those who, directly or indirectly, constrain lay judges to cite ecclesiastical persons before their tribunals in opposition to the canonical prescriptions. The Holy Office declared on 1st February, 1871, that the expression "those who constrain" meant, not judges or individuals, but solely legislatures and authorities, and on 23rd January, 1866, ordered bishops, when requested, to allow recourse to civil tribunals against their clergy. The Sacred Penitentiary, on 27th February of the same year, allowed Ordinaries to delegate lay judges in criminal cases and in those relating to church property and bequests for pious purposes in which ecclesiastics are concerned. Finally in the nineteenth century the privilege of the court was limited by concordats; but in that age of concessions, Pius X, as a result of a law suit which had caused scandal in Italy, substituted a period of severity. His "*motu proprio*" "*Quantavis diligentia*" of 9th October, 1911, affected private individuals themselves who "without permission from the ecclesiastical authority cite ecclesiastical persons before a lay tribunal and force them to appear." A reply of the Holy Office, early in 1912, explained that this is to be understood even of the civil portion of a criminal process, and of citation as an ordinary witness.

The present discipline concerning the privilege of the court is contained in Canons 120 and 121 of the Code. The crime condemned is no longer simply citation of a witness as was forbidden by Pius X (*Motu proprio Quantavis diligentia* of 9th October, 1911): the cleric forced to appear must be cited as defendant. Such is, at least, the most probable interpretation of the Code. On the other hand the prohibition affects not only the authorities but private individuals as well, as was the intention of Pius X and contrary to the reply of the

Holy Office dated 25th June, 1886. Finally, here, as in the case of the privilege of the canon, the Code introduces a scale of penalties more complicated and detailed than that of previous legislation. If it concerns a cardinal legate, major officials of the Roman Curia in the exercise of their duties, and of the delinquent's own Ordinary, excommunication specially reserved to the Holy See is incurred. This excommunication is simply reserved to the Sovereign Pontiff in the case where a bishop, abbot or prelate *nullius* (other than the Ordinary or a superior-general of a religious order under pontifical law) is sued before a secular tribunal.

Lastly, if the defendant is a cleric of the second class or a religious (in the sense defined above for the privilege of the canon) the Ordinary must deal with the matter by penalties proportioned to the gravity of the offence, the choice of which is left to his discretion. Ignorance, even if gravely culpable—the *ignorantia crassa* of Canon Law—exempts from punishment; affected ignorance alone, voluntarily feigned to evade a possible sanction, is not to be put on the same level, for Canon 2341 says that if anyone has the audacity to . . . "si quis ausus fuerit" an expression which implies the first excuse—crass ignorance. It must further be noted that the Code admits certain modifications of its severity: the Ordinary must not refuse a cleric permission to answer the citation of a layman who is suing him before secular tribunals except for just and grave reasons especially if the Ordinary has previously been unsuccessful in effecting a compromise (Canon 120). Further, in urgent cases, and to avoid greater evils, the person cited may appear without waiting for the authority of his superior and after having merely informed him (Canon 120). Also the Code allows for local derogations from this law either in virtue of custom or concordats (Canon 120).

(5) *Exemption from military service and from certain public duties*

Canon 121 of the Code maintains the privilege of exemption or immunity properly speaking of clerics, by declaring that neither military service nor public official duties incompatible with their state must be imposed on them. The question of military service for clerics was hardly a practical one under the Roman Empire, for the army was, at that time, recruited by voluntary enlistment and only the sons of legionaries were obliged to serve. Conscription reappeared with the barbarians, but their rulers exempted clerics, with the sole exception of the Visigoth King, Wamba, whose order obliging certain clerics not to fight indeed, but to lead their contingents to the armies, was in force only during his reign. Contemporary Councils which forbade clerics to bear arms, such as the first Council of Mâcon (581) and that of Bordeaux (between 660 and 673), were therefore assured of the support of the civil power. If, here or there, the presence of clerics in the army is observed, it is a question of military chaplains or ecclesiastics who have forgotten what is demanded by their vocation and by Canon Law. When the clergy entered the feudal hierarchy, abbots and bishops held fiefs whose possession imposed the duty of raising levies in the event of war, and of leading them to the king. Exemptions and dispensations were doubtless possible, but from the ninth century, high ecclesiastical dignitaries are seen frequently leading, in person to the armies, troops whom they had raised on their lands, and regarding this duty of "'host" as something perfectly natural; but it is one thing to lead a contingent and another to fight in person. Now it is the effusion of blood and the bearing of arms and that alone which the Councils forbid from the ninth century on. In the fourteenth and

fifteenth centuries, the armies of professional soldiers appeared and the situation became once more what it had been under the Roman Empire, the question of personal service no longer being, as it were, a mere feudal obligation. The different rulers no longer demanded contingents from the clergy, but subsidies for recruiting and maintaining their troops. At the end of the nineteenth century, universal conscription was adopted by a large number of nations but France stands alone in conscribing clerics in a general way (15th July, 1889); the Italian law of 7th June, 1875, contains a limited exemption despite the suppression of the principle of clerical privilege.

During the struggle itself, there has been practically no difference between the Church and the various states on the subject of military service for clerics, and it would appear that neither the religious nor the civil power have desired that there should be any. Nevertheless, the condemnation of the principle of military service for clerics, successively renewed by Pius IX (32nd proposition of the Syllabus), Leo XIII (letter to Cardinal Nina of 28th August, 1878 on the Italian Law), Pius X (beginning of the Encyclical *Vehementer Nos.* of 11th February, 1906), Benedict XV (decree of the Consistorial Congregation on clerics returning from the army after the Great War of 1914-1918), has been maintained by the Code in the following unequivocal declaration: all clerics are exempt from military service (Canon 121). Further, Canon 141 forbids clerics to engage themselves voluntarily without authority from their own bishop even if it is merely for the purpose of anticipating the call to service, and Canon 188 treats such an engagement as tacit renunciation of ecclesiastical office; the authors of laws and orders forcing clerics to undergo military service come under Canon 2334 §1, which provides an excommunication specially reserved to the Pope for

those who legislate or decree against the liberty or rights of the Church; persons in minor orders who take up military service without permission cease to be clerics (Canon 141); all who are obliged to undergo military service are affected, until they are free, by an impediment to receiving orders (Canon 987 §5) and wilful homicide is an irregularity (Canon 985 §4) (cf. the reservation made by Cardinal Gasparri on this point, p. 89, note 1).

(6) *Exemption from certain public duties*

The exemption of the clergy from public burdens and duties goes back to the Christian Roman Emperors. Constantine and Constantius freed them from forced labour (Constitution of 353 renewed by Constantius and Julian Caesar in 357, and by Valens, Gratian and Valentinian in 377). Before these, Constantine had exonerated ecclesiastics from the functions of *curiales*, municipal magistrates who had the crushing burden of collecting taxes (Rescript to Anilinus pro-consul of Africa from 313-319, renewed by Constantius and Constantine in 349 and 354, and Valens, Gratian and Valentinian in 377). Honorius and Theodosius II decreed in 416, that clerics must have nothing in common with public activities and administration (*actus publici et curia*) and Valentinian asserted the principle that all clerics must occupy themselves solely with ecclesiastical affairs (Constitution of 452).

This legislation was the recognition of the maxim in the Second Epistle to Timothy ii, 4: "No man being a soldier to God entangleth himself with secular business" (the Greek text makes no mention of God), which was the basis of many ecclesiastical decisions in the fifth century: about the year 400, the Apostolic Constitutions and the Canons of the Apostles (Nos. 6 and 8) prohibited bishops,

priests and deacons from taking part in any public office, a prohibition which was extended to all clerics by the Councils of Chalcedon (451) Canon 7, Angers (453) Canon 7, and of Tours (460) Canon 5, for the "*militia*" mentioned by these Councils signified, in current official language, every kind of public office.

In the barbarian era, bishops and clerics had often to make up for the lack of judges and governors and so we see in Gaul, at least, that the prohibition of the *militia* disappeared; if it remained the understood thing that public office could not be imposed on clerics, their voluntary co-operation in the administration of justice and in governing appeared to be lawful in an age of anarchy, when, often enough, the clergy remained the only depositaries of traditional law and the best guarantee of order. The feudal system only increased the penetration of clerics into public affairs, and the movement became so strong that decisions given at this time by ecclesiastical authority seemed rather to restrain clerical initiative in this respect than the demands of the civil power. At the very outset the bishops and abbots who had become feudal lords held their courts on their own lands, which did not, strictly speaking, violate the immunity since these tribunals became church courts where all cases both spiritual and temporal were decided; but from the end of the eleventh century clerics and monks are seen exercising more and more the duties of advocates and even of assessors in the secular courts themselves. Roman Law was once more being studied at Bologna and subsequently in the other universities, and clerics (who almost entirely constituted the lettered class) it was, who applied themselves most to this study. The public were, therefore, compelled to invoke their aid, and they themselves were tempted to profit by it. In fact the ministry and the cloister were more and more forsaken for the law school and the offices of judge

and advocate. The Church reacted against this. The Second Lateran Council (1139) forbade monks and canons regular to leave their houses for the purpose of teaching secular law (Canon 5), the Council of Avranches (1172) (Canon 12) forbade secular clerics to be judges at the behest of feudal lords, the Third Lateran Council (1179) pronounced suspension against clerics—even those in minor orders—who exercised the office of advocate in the lay court or were judges at the command of princes, and declared that ecclesiastics could plead only on their own behalf, or for their churches or the poor, and forbade religious to exercise the same functions (Decretals, Book I, Title XXXVII, Chap. I and Book III Title L, c. 4); but from the year 1200 these strict rules had to be relaxed before the irresistible pressure of custom: the Councils modified their prohibitions and admitted numerous excuses, so much so, that only a prohibition to act in "*causae sanguinis*"(i.e., in cases entailing death or the shedding of blood) was maintained in a general way, to which the famous Fourth Lateran Council limited its intervention (Canon 18). Thus while the Parliaments were cutting themselves off from the royal court, the clerical counsellors had their allotted places in them (first half of the thirteenth century). Moreover, the part played therein by clerics did not depend solely on their legal competence; it was also a result of the duty incumbent on ecclesiastical lords of giving advice to their suzerain.

Political duties were added to judicial offices: bishops and abbots were frequently "*missi dominici*"—imperial inspectors—under Charlemagne; they became counts, in many cases, from the second half of the ninth century: a little later on clerics became ministers of the king, e.g., Lanfranc and Suger; the position of grand chancellor was often entrusted to them in France, Germany, Spain and England: and as long as the ancien régime lasted,

the participation of clergy in the high places of the state was a normal factor. This condition of affairs was not considered inconvenient or dangerous except at the time of the question of investitures at the end of the eleventh and beginning of the twelfth centuries, but as soon as it was understood that the sovereign would give to his grand officers or vassals who were clerics only temporal power by the sceptre, and that the grant of spiritual power by cross and ring would be reserved to the religious authority (Concordat of Worms, 23rd September, 1122), no one dreamed any longer of prohibiting clerics from secular administration, and the discipline of the Council of Chalcedon fell into desuetude. The French Revolution bringing in its train progressive secularization of Christian states barred the clergy from a great number of public offices: it has therefore helped, without its promoters and adherents ever dreaming of it, to make the immunity which we are studying better respected and that by the ecclesiastics themselves. Moreover, the Civil Law of some states expressly exempts the clergy from participation in state matters (if necessary, by prohibiting them).

In Italy the pastoral clergy are excluded from public and municipal office within the territory of their parishes. (A. Boudinhon, "*Immunity*" *Catholic Encyclopaedia*). The pre-war territorial German laws generally barred ecclesiastics from public office (J. B. Sâgmuller *Lehrbuch des catholischen Kirchenrechts*, 1914, Vol. I, p. 25). In France, under the Concordat, administrative practice allowed ecclesiastics only offices paid by the state as religious offices. Article 3 of the Law of 21st November, 1872, excludes from a criminal jury the ministers of all religions recognized by the state. The Council of the Parisian Bar does not admit ecclesiastics to membership.

At this stage it would seem that we have returned to the discipline of the Council of Chalcedon, which com-

pletely prohibited clerics from undertaking secular administration and at the same time declared that they were exempt from it; but history never repeats itself in exactly the same way. In fact Canon 121 of the Code claims for the clergy not immunity from all public office but only from such office as is incompatible with their state; this distinction is absolutely just, inasmuch as the modern specialisation of work may quite easily leave to ecclesiastics in civil matters a part so carefully delimited as to be capable of suiting them. As for the incompatibilities between the clerical state and secular affairs, Canon 121, which we shall study later on, defines at least a certain number of them in dealing with the duties of clerics.

(7) *The privilege of competence*

Exemption from taxation is no more than an historic memory and the Code does not even mention it. The privilege of competence is so called because in Roman Law the *competentia* was a guarantee granted to certain privileged debtors. The definitive law on this subject was a decretal of Gregory IX (Decretals, Book III, Title XXIII, c. 3) relating to a certain cleric called Odoard from which the name "Odoard's privilege" is also given to this immunity. The said cleric had been cited by his creditors before the officer of the Archdeacon of Rheims and excommunicated for having opposed his bankruptcy while at the same time admitting his debt. The Pope ordered that the excommunication be raised and also that a guarantee should be demanded from him. Subsequently this immunity was extended to bodily restraint and the seizure of goods constituting a cleric's ordination title. The disappearance of excommunication for debt, which was frequent in the thirteenth and fourteenth centuries, and subsequently of bodily restraint (23rd July, 1867, in France) have almost entirely stripped the

privilege of competence of all its interest. The Code, in Canon 122, merely leaves to the ecclesiastical judge the duty of deciding what must be earmarked from the resources of a clerical debtor to ensure him a living suitable to the dignity of his state, while at the same time imposing on the said cleric, the obligation of discharging the debt as soon as possible. The laws of Germany, Austria, Italy and Spain declare that a certain quota of income and certain ecclesiastical goods are exempt from distress (J. B. Sâgmuller, loc cit, and article on "Privileges of Clerics" in the *Catholic Encyclopaedia*). This was the case in Germany and in Austria at least before the Great War.

(8) *Acquisition and loss of immunities*

The acquisition and loss of immunities are in a general way subject to the rules given above, especially in the case of canonical privilege. They protect religious of both sexes as well as clerics, and for this reason canonical documents speak quite frequently of the immunities of ecclesiastical persons and not exclusively of clerical immunities. They extend to the different classes of church folk in the manner previously described. Loss of them being one of those unpleasant things—*res odiosa*—which must be limited as far as possible in the legal order—*odiosa sunt restringenda*—becomes effective only in the cases of reduction to the lay state, the censures, and quitting of religious life, to which the law expressly gives this effect and which are enumerated above.

Clerical immunities cannot be renounced, because the Church has not established them for individual advantage but for the good of spiritual society which requires that the dignity and independence of the clergy should be safeguarded.

CHAPTER II

OBLIGATIONS OF CLERICS

Piety—Obedience—Knowledge—Celibacy and chastity—Common life—External dress—Secular occupations

In a general way clerics are obliged to lead a holier life than the laity to whom they owe good example.

(1) *Piety*

Their life of piety is ensured by counsels and precepts. The counsels are frequent confession, mental prayer, visit to the Blessed Sacrament, the rosary and examination of conscience every day. The precepts are: (1) a retreat every three years, at least, to be made in a pious house according to the rules laid down by the Ordinary who can dispense from it only once in a while for a just cause (this was the practice in certain countries particularly in France and extended to the universal church by Leo XIII in his encyclical Quod multum of 22nd August, 1880); (2) the recitation of the breviary.

At Rome from the fourth to the seventh centuries, the clergy belonging to the presbyterial titles recited the nocturns and lauds every day; this obligation was not of a personal character but formed part of the service in the titular church in such a way that if they were on a journey they were not bound to it. The same custom is observed in Gaul and Spain in the sixth century. From the eighth to the tenth century (in Rome) the monks attached to the Roman basilicas—the *monachi canonici*

replaced the clergy in the recitation of the office and added the day hours to the night office. This was not a gratuitous canonical obligation but a just return for the benefice: office and benefice go hand in hand.

In the eleventh century, ecclesiastical reform had among other results that of imposing on all clerics attendance at the divine office. In the Frankish Church, private recitation of the office even when travelling is a fact, at least in the case of zealous clerics, from the time of Gregory of Tours (sixth century), and Hincmar (ninth century) certainly seems to have imposed it. This Gallican custom had its repercussion in Rome itself (P. Battifol, *Origine de l'obligation personelle des clercs à la recitation de l'office canonique*, *Canoniste contemporain*, 1894, pp. 9-15). Nevertheless, it would seem that private recitation of the office could not have become quite general until the thirteenth century when the Franciscans spread the use of the Breviary—a comparatively small and portable book which could easily be taken on a journey.

At the present time, only clerics in major orders who have not been reduced to the lay state are obliged to recite the divine office (Canon 195). Illness, arduous and necessary work (e.g., hearing confessions) and blindness are exempt from the obligation. The Pope frequently authorises bishops to substitute the saying of the Rosary for the recitation of the breviary in the case of priests whose eyesight has become very weak. Pius X said that the Rosary was then a sort of wooden breviary (*breviarium ligneum*). (Conversation with Cardinal Amette.)

(2) *Obedience*

The obedience of clerics to their bishop is the subject of a special engagement made at the time of ordination, at least in the case of priests, dating, at the latest, from the seventh century. "It is in Spain that we find the

first express promise or profession of obedience which clerics have to make to their bishop, and bishops to their metropolitan" (Thomassin, *Ancienne et nouvelle discipline de l'église*, Bar-le-Duc edition, Vol. IV, pp. 432-433, with special reference to the Fifteenth Council of Toledo (688)). This promise was called at that time in Spain a *placitum* (placet). "Nothing was more common in the eleventh and twelfth centuries than professions of obedience and oaths of fidelity among the various ecclesiastical ranks. Primates demanded them from archbishops, bishops from abbots, abbots from canons, and other holders of benefices, parish priests from their chaplains or curates" (Thomassin, ibid, p. 446).

In this, it is easy to recognise the influence of feudalism which organized the whole of society by a series of engagements made between man and man. From the twelfth century on, the promise of obedience to the bishop figures in the ritual of ordination to the priesthood. In modern times the bonds between clergy and bishop have not been relaxed—just the contrary. The suppression of numerous intermediaries has completely centralised the Church round the bishops and the Pope, and it has to be admitted that these intermediaries (especially ecclesiastical and lay patrons) were far from having a constant solicitude for the general good. "The canonical obedience of the secular clergy is nowadays much stricter than formerly, at least in a certain number of important points; and yet, taken as a whole, the laws on the subject have not changed since the Council of Trent. What has changed, however, is the mass of conditions relating to ecclesiastical benefices and the ministry, and this change has produced its counterpart in the conditions for admission to orders, ordination titles and the mutual rights and duties of a bishop and his subject" (A. Boudinhon, Review of "*De canonica cleri saecularis obedientia*," by Ferdinand Claeys-Bouuaert,

Louvain, 1904. *Canoniste contemporain*, January, 1905, pp. 34 and 35).

The Code recalls the special obligation incumbent on all clerics of showing respect and obedience to their Ordinaries. It observes that this duty falls particularly upon priests and, therefore, refers to their ordination promise whose very words it repeats (*reverentiam et obedientiam*). One of the chief consequences of this promise is their duty of accepting the employment allotted to them by their bishop (Canon 128). The bishop can enforce this duty, only if necessity requires it, but he is the judge of that necessity. Nevertheless there are lawful impediments which may be successfully urged, and appeal is always possible to the Congregation of the Council. We shall return to this question in dealing with removable and irremovable parish priests.

(3) *Learning*

It is a principle that a cleric's studies should never be at an end (Canon 129). He must, therefore, constantly keep himself well-informed, adhering to the traditional and common doctrine and at the same time avoiding both secular innovations and false learning (Canon 129). The taste for study is maintained nowadays among the body of the clergy, by two institutions: examinations for the junior clergy and ecclesiastical conferences. It is no innovation for the Church to place on bishops the duty of enquiry into the knowledge of the clergy even after ordination. The Fourth Council of Toledo (633) laid on country parish priests the obligation of reporting themselves several times a year to the bishop in order to give an account as to how they fulfilled their office and administered baptism (Canon 26, Bruns *Concilia*, Vol. 1, p. 231). Reginon de Prüm (+995), in the manual for pastoral visitation edited by him, gives a detailed list of

questions which the bishop had to ask the country priests in turn (c. 95 of the *Libellus de synodalibus causis et disciplinis*, P.L., Vol. LXXXII). The Code requires all priests, even parish priests and canons, to undergo examination for at least three years after ordination. The local Ordinary may, for a just cause, exempt from it. The syllabus, which embraces the whole of theology, must be previously intimated. The arrangements for this examination as well as the appointment of examiners are left to the Ordinary's initiative (Canon 130). The results of the examination must be taken into account in the distribution of offices and benefices, but the Code is careful to add "everything else being equal," because learning, which is always necessary, never suffices of itself in the ministry; it must also be accompanied by virtue, common sense, etc. The Ordinary may inflict canonical penalties on those who, without lawful impediment or dispensation refuse to be examined.

Ecclesiastical conferences are an ancient French ecclesiastical institution. They go back to Hincmar of Rheims (middle of the ninth century), who called them "calends" because he arranged them for the beginning of each month (Capitulary I of 852, c. 15, *Quando presbyteri per calendas convenerint*, P.L. Vol. CXXV, col 777). They were common in France from the second half of the ninth century and their use spread to England, Germany and Italy. At the time of the Council of Trent they were sadly neglected. Under the influence of St. Charles and later of St. Vincent de Paul, the institution regained strength so much so, that in the eighteenth century, it was general in Europe. After the troubles of the Revolution it was revived especially in France. At the Vatican Council, French and German bishops petitioned for it to be made a general law for the Church (*Collectio Lacensis*, Vol. VII, c. 834 and 873). The Code has acceded to this request (for the pre-Code period see the

work of Mgr. Péchenard, which he has himself summarised in Vacant's *Dictionnaire de Théologie* under the article Conférence). Canon 131 lays down that there shall be several conferences every year on days to be arranged by the Ordinary, in the episcopal city, and in each deanery on liturgy and moral theology, to which may be added other subjects calculated to foster ecclesiastical learning and piety. If the conferences cannot easily be convened, written papers may lawfully be substituted. Dispensations are possible, but, failing them, all secular priests, all religious with the cure of souls (even if they are exempt from episcopal jurisdiction) and priests in possession of faculties for the confessions of seculars (in their case only if there is no conference held in their houses), are bound either to attend the conferences or to send in written papers. The Ordinary can adopt measures against delinquents and deprive religious of the faculty of hearing confessions of seculars (Canon 2377).

(4) *Celibacy and chastity*

Celibacy has been practised from the earliest ages by the majority of priests raised to Holy Orders, whether they had never been married at all, or were married but had, after ordination, renounced all use of marriage; but "this was not the application of a formal law, but the regular development of an apostolic institution" (Vacandard, *Etudes de critique et d'histoire religieuse*, 1st series, 1906, p. 72).

In the East, the law of celibacy has never been imposed in a general and absolute manner on clerics in major orders. The Council "In Trullo" (held at Constantinople in the palace of Trullum in 692) decrees in this respect, as follows: bishops must preserve continency; priests, deacons and subdeacons must not marry after

ordination; but, if they happen to be married at the time, whosoever deprives them of their conjugal rights is deposed. A priest or deacon repudiating his wife on the pretext of piety is excommunicated. The Roman Church has recognized the legality of this legislation (Decretal of Gratian, Dist. xxxi, cxiv; Stephen X in 1058, Decretals, Book III, Title III, c. vi; Benedict XIV, Constitution E si pastoralis, 1742). On this point the Orthodox churches always adhered to the Council of Chalcedon and have adopted the custom of entrusting pastoral duties only to married priests. Most of the Eastern churches in communion with Rome have ended up by accepting the law of celibacy, but the Holy See tolerates the ancient custom among the Uniate Armenians and the Maronites.

In the West, the Council of Elvira (near Granada in Spain), in the year 300, was the first to impose celibacy on priests and deacons (Canon 33). Pope Siricius followed suit (Council of Rome 386, *Jaffé*, Vol. I, p. 41), (Letter to Himerius of Tarragona in which, however, he contents himself with prohibiting access to major orders to those who contravene it in good faith: c.7, P.L. Vol. XVI, col, 558-559); and Pope Innocent I (to Victricius of Rouen, cap. 10, to Exuperius of Toulouse, cap. 1), St. Ambrose (*De officiis*, I.I.cap. 1), St. Jerome (*Contra Jovinien*, I.I.cap.34), St. Augustine (*De conjugiis adulterinis* I.II.cap.22), contributed greatly to elevating celibacy to a position of honour. St. Leo renewed the prescriptions of Siricius and of Innocent I extending them to subdeacons, but he did not order clerics in major orders to dismiss their wives (it was not yet the practice in Rome in the eighth century; see above the chapter on seminaries).

In the barbarian epoch departures from this discipline are here and there noticed, and in the tenth century it suffered "a total eclipse" (Vacandard) in Germany,

Lombardy, Southern Italy and France; the eleventh century reform reacted vigorously against this state of affairs (Council of Rome 1050 under Leo IX, Council of Rome 1074 under Gregory VII, Canons 11-20, Council of Malfi under Urban II in 1089, Canon 12). Finally, the Decretals declared that the marriages of clerics in major orders were null, which was denied in the eleventh century and merely suggested in the twelfth (Decretals of Gregory IX, 1234 Book I, Title XXI, c.4., Book III, Title III, Canon 1). The Council of Trent declared anathema against those who affirmed the possibility and validity of marriages of priests (Session XXIV).

In the present discipline, clerics in major orders cannot marry and sins committed by them against chastity are sacrileges (Canon 132 §1). However, a subdeacon, ordained under the influence of grave fear who has not ratified his ordination, at least by the exercise of his order, can marry as soon as he is reduced to the lay state (Canon 214 §1). The marriage of a cleric in major orders is null and void (Canon 1072) and results in an irregularity *ex delicto* (Canon 985 3°). Such an attempt, as well as attempt at a purely civil marriage, is punished by excommunication simply reserved to the Holy See (Canon 2388 §1), and is accompanied, after ineffective admonition, by degradation inflicted by the Ordinary. Clerics in minor orders who exercise the right, which they still retain, of contracting marriage, are, by that very fact, reduced to the lay state (Canon 132 §2). Formerly, this was not the case. A married man promoted to major orders in good faith but without an apostolic dispensation cannot exercise the functions of the order or orders which he has received (Canon 132 §3). As for their relations with women, clerics must refrain from having in their houses, and associating with, women not merely of evil life but simply subject to suspicion. They may live only with those women whose

relationship (mother, sister, aunt) and age place them beyond any suspicion. The Ordinary is the judge with regard to forbidding priests to frequent the company of, and to reside with, women who although not themselves the object of suspicion would be for them a source of danger or scandal (Canon 133). Clerics who refuse to obtemper these prescriptions are by that very fact presumed to be living in concubinage (Canon 133 §4).

In Book IV the Code provides penalties against clerics living in concubinage. After a preliminary admonition, they may lodge a defence which is to be investigated by the synodal examiners (parish priests chosen for this purpose); if they are provided with a parish or an immovable benefice they may even present a second defence if the first has been disallowed, after which, if the arguments adduced by the inculpated person are not considered valid, he may be suspended *a divinis* (prohibited from the exercise of his orders), deprived of his parish, gradually deprived of the income of his benefice, and finally his benefice itself may be taken away (Canons 2176-2181). More serious offences against chastity are punished by legal infamy, deprivation of all offices, benefices, dignities and employments, and if necessary, by deposition (Canon 1359 §2).

(5) *Common life*

Community life for clerics is recommended though not imposed by the Code, which further declares that it must be preserved where it is already in existence (Canon 134). In point of fact it has never been able to be imposed universally neither at the time of the Carolingian nor Gregorian reforms. The discipline of benefices was against it, the benefices being, for the most part, destined for the maintenance of only one cleric. The necessity of pastoral work in the country, where the

presence of a priest in the midst of every group of Christians is in itself to be desired, has often militated against it and still does. Moreover, community life and perfection are not always absolutely synonymous (cf. Review of Dom Paul Benoît's "*La vie des clercs dans les siècles passés, Paris* 1917 *in Revue du clergé français,*" by M. Villien, 15th December, 1917, pp. 481-498).

(6) *External Dress*

The external dress of clerics entails the wearing of the clerical garb and tonsure. Up to the end of the sixth century clerics were not distinguished from the laity by any particular costume at least generally speaking, and when they made a change by wearing the pallium and girdle of monks instead of the tunic and toga, ecclesiastical authority protested (Letter of Pope Celestine 422-432 to the Bishops of Vienne and Narbonne). When the barbarians had set the fashion for short garments (even in that time!—but they were barbarians) clerics kept to the Roman toga stretching down to the heels—the *vestis talaris*, which has developed into the cassock. This differentiation took place at the time of Gregory the Great who bears witness to it about the year 600 (Letters, Book III, Letter 24). The custom was, however, erected into a formal law at a much later date, but only under the form of an obligation to wear a long garment (Fourth Lateran Council, 1215, Canon 16). The Code is very general on this subject, prescribing only a decent costume and leaving Ordinaries free to determine the style of ecclesiastical dress, or even to permit clerics to wear secular dress outside their churches in places where custom does not allow them to act otherwise (Canon 136). The wearing of the tonsure is similarly laid down, with the same reservations as to local conditions. The Code does not forbid the wearing

of beards—bishops may allow or prohibit it (Reply to the Bishop of Breslau, A.A.S., 1920, p. 143). Rings may be worn only by certain persons.

Clerics in minor orders who persist for a month in not wearing clerical dress and tonsure after being admonished are *ipso facto* reduced to the lay state (Canon 136 §3). Clerics in major orders in similar case are considered to have tactily renounced their office (Canon 188 §7). Canon 2375 adds, in their case, that they must be suspended from the orders they have already received, admonished afresh if they are leading a life incompatible with the ecclesiastical state, and deposed three months after the second warning if they fail to amend.

(7) *Secular occupations*

The prohibiting to clerics of secular occupations which are unworthy of their state or even simply incompatible therewith goes back to a text of St. Paul, at least according to the rendering of the Clementine Vulgate: "Nemo militans Deo implicat se negotiis secularibus ut ei placeat cui se probavit." The Greek text does not contain the word "God" and is translated as follows by Crampon: "In the profession of arms no man entangles himself with secular business if he wishes to please him by whom he has been enrolled" (II Tim. ii, 4). Whatever exegesis has to say on this point, tradition very soon saw in it a prohibition for those who are soldiers of God from occupying themselves with secular affairs, and this is how it is interpreted by the Decretals in which the following title occurs "that clerics and monks must not busy themselves with secular matters" (Book III, Title 30, Sext Book III, Title 24).

Clerics must not, without having previously consulted the local Ordinary, act as guarantors for other people

even if the guarantee is given on the security of their own private means.

Common trades are contrary to clerical dignity, e.g., innkeeper and butcher; as well as games of hazard for large stakes: too frequent hunting or hunting "of the type technically known as clamorous" (the Congregation of the Council decided on 11th June, 1921, that a bishop could forbid even ordinary and occasional hunting if the custom of the country demands it, but only under pain of a censure *ferendae sententiae* (inflicted after trial and sentence) and not a censure *latae sententiae* (incurred by the very fact of committing the crime); frequenting taverns except in case of necessity (a very ancient prohibition going back to the pseudo-Council of Laodicea at the end of the fourth century). Canon 138 allows it to be understood that the Ordinary may make these prohibitions more exact and extensive.

There are other occupations which, without having anything degrading about them, are nevertheless incompatible with the clerical state. Such is at present the case with regard to medicine and surgery. In the East they were already forbidden in the ninth century. In the West "the most saintly bishops used to devote themselves to the practice of medicine and we learn from St. Fulbert, Bishop of Chartres (+1029), that he was exceedingly well versed in it" (Thomassin, *Ancienne et nouvelle discipline*, Vol. IV, p. 130).

In the twelfth century when higher studies revived, the clergy abandoned en masse, their ministry or theological studies in order to devote themselves to law and medicine (or as they called it at the time, physic). The Popes necessarily reacted against this desertion and Honorius III extended to a great number of clerics—although not to all—the decision of Alexander III (at the Council of Tours 1163, Canon 8) "forbidding monks to study physic and secular law" (Decretals, Book III, Title 30, c.

5 and 10). But medicine remained none the less a clerical rather than a secular profession under the ancien régime. "Doctors of medicine formerly made profession of the clerical life as well as of medicine. They had themselves dispensed from this in 1452 by Cardinal d'Estouteville. . . The Concordat of 1516 desired that medicine, as well as civil law, should be a preliminary step to proceeding to a benefice" (Thomassin, l.c.). On reading these lines one thinks of Rabelais. As for surgery, the Church was more severe since it entails effusion of blood, of which the Church has always stood in horror. The Fourth Lateran Council in Canon 18 prohibits to all clerics in major orders any practise of medicine involving cauterisation or incision (Decretals, Book XII, Title 50, c.9). The present law simply prohibits all clerics from the practise of medicine and surgery: despite this, theologians sustain the teaching of St. Alphonsus who considers that, in an urgent case, if there is no doctor available a cleric can apply the remedy he thinks necessary, without committing sin or incurring any irregularity (*Moral Theology*, Book VII, No. 384). Gratuitous and prudent medical advice is equally lawful. Permission to practise may be obtained, but only by apostolic indult. We have already seen that a cleric who causes death by the unlawful practise of medicine or surgery becomes irregular (Canon 965, No. 6).

Formerly, and up to the fifteenth century, "the offices of royal notary imperial and apostolic, were frequently held by ecclesiastics and even by priests" (Thomassin, l.c., Vol. II, p. 374). The penalty of suspension and deprivation of benefice levied in 1211 by Innocent III (Decretals, Book III, Title 50, c.8) was aimed only at clerics in major orders and was far from being always maintained in full vigour. In our day the prohibition is absolute unless an indult has been obtained from Rome.

Such office is obviously authorised in the case of ecclesiastical courts where the notaries are usually clerics. The prohibition of any office entailing civil jurisdiction or administration goes back at least to the Council of Chalcedon (451) Canon 7; it was renewed at the third Lateran Council, Canon 12 in 1179 (Decretals, Book 1, Title 371). But the feudal system forced clerics, in the nature of things, to exercise jurisdiction in the courts of their suzerains in order to fulfill the duty of giving advice (consilium) incumbent on every vassal. The arch-chancellors of France were all clerics under the second dynasty, and the Capetians did not entirely break away from the Carolingian tradition. There were ecclesiastical peers under the French ancien régime and when the number of counsellor-clerics in the parliaments was reduced (e.g., under Henry II) the clergy protested.

The increasing secularization of nations has put an end to such a state of things—a fact which has made the Church's absolute prohibition in the present law remarkably easy (Canon 139 §2—although dispensation may be had by apostolic indult).

Examples of offices which are prohibited embrace those of cabinet minister, mayor, judge and magistrate. Another series of occupations and offices is also prohibited but less strictly, for in these cases the Ordinary may himself dispense and apostolic indult is therefore not required, viz. :

(1) Management of goods belonging to laymen. This prohibition goes back to the Council of Chalcedon, which sternly reprobates the practice as being defiled by damnable greed, but makes exception for tutorship of minors imposed by law, and assistance, at the bishop's request, to orphans, widows and the poor.

(2) Any office which entails the rendering of accounts e.g., director of a bank (even a savings bank).

(3) The office of solicitor or barrister, except if appearance is made on one's own behalf, for one's family or church (we have seen that in the thirteenth century the study of civil law was forbidden to the clergy).

(4) Attendance as a juryman or witness for the prosecution in trials which involve a severe penalty (and not simply when there is a penalty of death, torture or mutilation, as was the constant pre-code tradition) except in case of necessity, which arises if the law insists on appearance in a criminal trial.

In order to stand as candidates for parliament, clerics require the authority of the Holy See in the places where such is laid down, in other places that of their own Ordinary and the Ordinary of the constituency. In countries where cardinals, resident bishops and archbishops are senators by law, if the Holy See has approved (even tacitly) this custom, these persons may fulfil their electoral duties on condition that they provide for the administration of their dioceses during the sessions; if these conditions cannot be observed they must get permission from Rome (Commission for the interpretation of the Code 25th April, 1922 ad primum). Ordinaries are recommended to be strict in granting clerics permission to stand as candidates (ibid. ad secundum). Political activity is still permitted to the clergy, but they must comply with the regulations of the Holy See, while Ordinaries retain, in this respect, the right of supervision, admonition and punishment (Congregation of the Council, Romana et aliorum, 15th March, 1927, Acta Apostolicae Sedis, 1927, p. 138).

Clerics must not attend stage-plays, dances, and gatherings which are unbecoming to them (Canon 140), which admits the possibility of attending concerts in theatres and being present at plays outside of theatres strictly so-called. The Roman spectacles were vitiated by paganism, immorality and cruelty, and Tertullian

forbade them to all Christians (De spectaculis). Tradition maintains this prohibition in the case of clerics, e.g., the Councils of Carthage 397, Canon 2, of Agde (506) Canon 39, in Trullo 592, Canons 50 and 51, etc. etc.

The Ordinary's permission is necessary for the voluntary enlistment of a cleric in order to free himself earlier from conscription, and this under pain of ceasing *ipso facto* to be a cleric (Canon 141) if he is in minor orders. We have already seen, in the section on immunities, what is to be said, from the historical point of view, about military service for clerics. Still more emphatically than voluntary military service any part in rebellions is forbidden to ecclesiastics (Canon 141 §1).

Commerce in the strict sense of the word has always been forbidden to the clergy (Third Council of Carthage, Canon 15; Council of Chalcedon, Canon 3; Council of Tarragona 516, Canon 2; Third Council of Orleans 538, Canon 27; Council of Mainz 813, Canon 14; Fourth Lateran Council 1215, Canon 10, etc., etc.). Nevertheless, at certain periods, many ecclesiastics carried on trade and the Theodosian Code in particular takes it for granted (Book xvi, Title 2, Laws 8, 14 and 15). In our own days, this abuse is much rarer. What the Code forbids to clerics is commerce strictly so-called which, in accordance with the definition of the Council of Tarragona (516), consists in buying in order to sell at a profit. Industry which consists in deriving benefit from manual labour is also included in this. Business carried on through an agent or for the benefit of others comes equally under the ban (Canon 142). But "economic commerce" or resale, at the current price, of objects which one has used, "political" commerce, without making profit, ie., for the service of a community, town or parish, the sale of patrimonial products, the buying of stocks and shares without dealing in them (Holy Office,

17th November, 1875, 15th April, 1885) and finally an isolated and passing act of commerce, are permitted. The necessity of making a living, the fear of serious loss by immediate realisation of an inherited business, may be sufficient reasons for dispensation, but it is the bishop who grants it and then only for a limited period.

Residence in the diocese is imposed in some way upon all clerics. Even if they are not bound to it by office or benefice, they cannot be absent from the diocese for a considerable time without at least presumed permission from their Ordinary (Canon 141 §1). Three months would probably constitute a considerable absence which is the maximum period provided by the Code for vacations. The Sacred Congregation of the Council on 1st July, 1926, introduced a series of minute rules governing the stay of priests outside of their own diocese for reasons of recreation or health, requiring them to have the authority of their own Ordinaries and submitting such clerics to fairly strict supervision on the part of the parish priests and Ordinaries of the places they are visiting, with powers to the latter to decree suspension *ipso facto* in case they frequent theatres or take off clerical dress. The said Congregation has, at the same time, kept under the authority of their own Ordinaries and under the supervision of local Ordinaries priests who happen to be teaching in schools (22nd February, 1927). When a priest has gone into another diocese with authority from his own Ordinary, he remains affiliated to his diocese, to which he may be recalled on condition that the rules of equity are observed, i.e., without causing him serious loss, and with the guarantee that a decent living is ensured to him; the Ordinary of the diocese in which he is staying may refuse him leave to stay any longer unless he has given him a benefice, since, in this case, he could not send him back without first depriving him of the benfice for canonical reasons (Canon 744).

CHAPTER III

REDUCTION OF CLERICS TO THE LAY STATE

Character of this measure—Procedure—Effects

THIS step does not nullify valid ordination, the powers conferred by which cannot be lost; but it deprives a cleric of rights, privileges and the legal status of a cleric, whereby he is assimilated in externals to a layman. It is not necessarily a punishment, but sometimes a means of freeing a man from obligations which he has not freely contracted or which are not definitely imposed on him.

Procedure

(1) A cleric in major orders is reduced to the lay state by a rescript from the Holy See, by decree or sentence, if, having been ordained under the influence of grave fear, he has not immediately ratified his ordination explicitly or at least implicitly by the exercise of the orders received (Canon 214), or by the penalty of degradation (Canons 2305 and 211).

(2) A cleric in minor orders becomes a layman once again in every respect: if he marries, unlawfully abandons the wearing of clerical dress and the tonsure, serves voluntarily in the army without authority or is dismissed from a religious institute (Canons 132, 136, 141, 648 and 699); or on his own initiative, the local Ordinary having been notified, or by decision of the Ordinary who, after mature examination, considers him unfit for sacred orders (Canon 211).

Restoration to the clerical state

(1) If it is a question of a cleric in minor orders the Ordinary may authorise it after enquiry and a period of probation (Canon 212).

(2) In the case of clerics in major orders a rescript of the Holy See is required (Canon 212).

Effects of reduction to the lay state

(1) It entails the loss of all the favours attached to the clerical state. The individual affected is no longer protected by ecclesiastical immunities and no longer enjoys any clerical privilege. It deprives him of all offices, benefices and pensions. A cleric reduced to the lay state can no longer wear the clerical dress or tonsure.

A cleric in major orders is no longer bound to recite the breviary after being reduced to the lay state. Normally he is bound to remain celibate, but if he has been ordained under the influence of grave fear, without having immediately ratified his ordination, he is by that very fact exempted from it; moreover, Rome dispenses this obligation often enough in the case of subdeacons, rarely in the case of deacons, and only in exceptional circumstances in the case of priests (e.g., after the Anglican schism by the Brief "Dudum" of Julius III, 8th March, 1584, after the French Revolution by the Brief "Etsi Apostolici" of Pius VII, 15th August, 1801).

PART IV

THE CURE OF SOULS

CHAPTER I

PARISH PRIESTS

Origin of parishes—Mediæval and modern parishes—Canonical idea—Nomination of parish priests—Their powers and rights—Duties of parish priests.

We shall not deal with the functions of bishops and their assistants in the general government of the diocese, since one volume of this series is given over to the episcopate, but only with parish priests, curates, rectors of churches and chaplains.

(1) *The origin of parishes*

In both the Old and New Testaments the word parish (*paroikia*) "suggests the idea of a stay in the manner in which a stranger stays with the inhabitants of a country which is not his own" In this sense St. Paul (Ephesians ii, 9), compares the *paroikoi* to the inhabitants *oikeioi*. In epigraphy, the *paroikos* is distinguished in the same way from the citizen (*polites*). In the prologue to Ecclesiasticus the parish designates the dispersion: the whole of the Jews dispersed throughout the world beyond Palestine (*the diaspora*). Now the new Israel is, as St. Peter tells us, a *diaspora* (I Peter, i, 1). This is the reason

why St. Clement of Rome speaks of the church which stays in Rome (*paroikousa*) (cf. letter of St. Polycarp, martyrdom of St. Polycarp, St. Dionysius of Corinth). It is from this that the substantive *paroikia* (parish) begins to be used in a concrete sense to signify the Christian community of a city or district.

During the most ancient period of Christianity this community was composed not of citizens, but of "people, affiliated in passing, who came from anywhere, justifying it less by their connexion with the city than by their goodwill" (cf. *Martyrdom of St. Polycarp and St. Irenaeus* in *Eusebius' Ecclesiastical History*, I, vol. 24). This etymological process is a paraphrase of the word used by St. Paul: "we have here no abiding city." In St. Jerome, St. Augustine, Venerable Bede (eighth century), the word parish means the diocese, the latter expression being reserved for civil terminology in which it meant, at the time of the Roman Empire, a group of provinces. On the other hand, up to the ninth century, the parish was sometimes called diocese and parish priests diocesan priests. Eusebius uses the word parish in its present sense (*Eccles. Hist.* I, vi, c.2) and after him Theodoret (Letter 113, P.G. Vol. LXXXIII, col. 1312), the Council of Agde (506) Canon 26, of Clermont 535 Canon 15, Sidonius Apollinaris (Letter, Book VII, letter 6, P.L. Vol. LVIII, c.569: Héfélé *Histoire des Conciles* translated into French by Leclerq, Vol. I, p. 601, note 4). In olden times, parish priests were called parochial, rural or diocesan priests, presbyteri parochitani, dioecesani, rurales, rectores, parochi plebani pastores, curiones). The word "curatus" (in French "curé") appears, for the first time, in a Libellus of 1251 (P. Fournier, *Les Officialités*, p. 318). At the beginning of the fourteenth century, it made its entry into canonical terminology (*Corpus Juris, Clementina c.2 de sepulturis*, Book III, Title 7).

During the first three centuries, the bishop was the

only parish priest in his diocese, but he confined himself little by little to the episcopal city. Normally it was he alone who officiated, preached, baptised and gave confirmation, and the priests merely formed around him a circle of concelebrants—the presbyterium; but at the beginning of the fourth century, with peace restored to the Church, Christianity became wide-spread in the country places although elsewhere its spread was only sporadic. The bishop of the city could not occupy himself with all his flock distributed, as they were, over a fairly wide territory in the East—very vast in the West—even by giving temporary delegation to his priests or deacons; Christian communities which cannot come often to the town and which the town clergy cannot visit regularly must have pastors in fixed places. In the East they hit upon the idea of putting at the head of smaller groups of the faithful, bishops, often called "chorepiscopi" (Council of Ancyra, 314, c.13, is the first to mention them) or country bishops, but this institution, which was little favourable to the prestige of the episcopate, soon fell into desuetude and the chorepiscopate ended up by becoming merely an honorary title no longer accompanied by the episcopal character. Hence from the beginning of the fourth century we notice country priests in Asia Minor, priests specially placed over villages or market towns, and their number soon increased.

In the West, recourse was had uniquely to the ministry of priests in the country-places (with rare exceptions) and the chorepiscopi made their appearance very much later than in the East and in different circumstances. In the district of Narbonne there were dioceses and rural priests from the beginning of the fourth century and even perhaps at the end of the third, for the Canons of the Council of Arles (314) presuppose that they have been in existence for some time and that their duties were a matter of common knowledge. In the rest of Gaul "the

parochial system was established at the end of the fourth and during the fifth century" (*Imbart de la Tour*: *Les paroisses rurales du* IV *au* XI *siècle*, Paris, 1900, p.9). Various classes of people contributed to the creation of parishes: "To sum up, we find in the fifth century churches established:

"(1) in a *vicus* (rural canton) or a castrum (marked town) by the bishop and inhabitants,

"(2) in the *ager ecclesiae* (church demesne) by a bishop,

"(3) in a *vicus* or *villa* demesne by a great landowner, cleric or layman,

"(4) *in loca deserta* (uninhabited places) by a hermit or monks" (p. 37 ibid.). These establishments were made, above all, under the influence of the cult of the saints, who supplanted false deities in places where they were most honoured. It is well known that the word pagan comes from *pagus* (country). "It may be said that it is, above all, owing to the cult of the saints that the country parish came into existence" (ibid., p. 49). In proportion as the parochial system extended in Gaul, so also did it increase in strength. As early as the fourth century, the country parish included a definite territorial area, a vicus (villa) or a group of villae without any attempt to follow the civil divisions. The rural clergy became more and more independent. At the beginning, the relations between the parish and the episcopal church must have been fairly close; possibly the sacraments were administered in it alone, while a priest or deacon carried to the country folk the Holy Eucharist which had been consecrated by the bishop (cf. Council of Arles 314). (We are here summarising Imbart de la Tour and using his own words.) But the country church began more and more to have its own worship; priests were necessary for it and the rural deacons disappeared or became subordinate to the priests. These country priests saw their power

steadily growing; they were given power to baptize all the year round (Synod of Rome 402 under Innocent I), power to teach (Council of Vaison 529), to bless the people, houses and fields, to depose clerics, even if deacons, under their jurisdiction (Council of Arles 554); they were dispensed from the obligation of celebrating the great feasts with the bishop (Council of Clermont 535, Canon 15, insists on this only for clerics attached to oratories). At the same time the custom was established of recruiting the country clergy on the spot. Honorius in 398 laid down that for "vici" and other places local clerics and no others should be ordained (Theodosian Code, Book XVI, Title 2, l.33). Pope Celestine ordered the bishops of Vienne and Narbonne not to raise to the clerical state strangers unknown to the people (Jaffé, No. 369).

The Council of Vaison orders country priests to educate young lectors to be their successors (529 Canon 1). This custom which was not peculiar to Gaul (cf. c. 90 of the Code of Canons of the African Church) ensured independence and influence to the parish priest, who was also the natural representative of men whose fellow citizen he was, and who could hope for no change (*Imbart de la Tour*, l.c. p.65).

Finally, from the second half of the fifth century, the country priest acquired an independent patrimony, for the Council of Arles (542), Canon 36, orders the bishop to give a special endowment to every country church. True the bishop retained, for a certain time, the power to administer this endowment, and the Council of Orléans (511) allowed him to leave only a portion of the revenue of their churches to the country clergy, and to dispose of the residue at his own discretion reserving to him the right of alienation. But in 538 a second Council of Orléans presupposes in Canon 5 that the income from the parochial foundations goes entirely to their clergy

and the Fourth Council held in the same city in 541 authorizes parish priests to make alienations. The Council of Paris (614) in Canon 8 established the economic independence of parishes: "Let everything which has been bequeathed to churches for their maintenance be under the control of their head or bishop priest or cleric attached to the holy places." Hence, firmly established in the sixth century the parish soon became "the social unit par excellence" (*Imbart de la Tour*, l.c., p.72).

The christianization of the country places due to the missions of St. Columbanus and the Irish monks, the increase of the ecclesiastical demesne, the progress of agriculture, the feudal idea of a demesne which must be self-sufficient in spiritual as well as temporal matters and the multiplication of shrines of the saints, led to a great development of parishes from the seventh to the ninth century. To be more accurate it should be said that most of the French rural churches were founded in the second half of the eighth century, and the first half of the ninth century. This explains the appearance of chorepiscopi in the West from 768 on; these persons had the duty of ordaining country priests and deacons, of consecrating country churches, of reconciling penitents in the villages and market towns and of confirming in these places. This is also the reason why, in the ninth century, there is question of rural archdeacons and archpriests at the head of a group of parishes (the Merovingian archpriests were not at the head of proper country districts). At this epoch, we find numerous regulations on the creation of parishes by bishops, the consecration of rural churches and the establishing of their endowments.

(2) *Mediæval and modern parishes*

Before the Gregorian Reforms, round about 950-1050, the Church suffered the repercussion of feudal anarchy from top to bottom of her hierarchy. In all her ranks secular powers got a grip not only of her property but also of her dignities. The Church was invaded by corrupt laymen and in contact with them her decadence became appalling. . . With regard to inferior benefices, e.g., parish churches, the situation was even worse (than with the papacy and episcopate); they had in very truth become part of the patrimony of laymen. Whether as heirs of the founders or by usurpation, the lay lords had seized the churches enclosed by their estates and exercised over them a real dominium which has been called (and the fact goes back far enough) "the private appropriation of churches." This expression means that the lords claimed to be not only owners of the material buildings for worship and of the foundations, but further had the right to enjoy the various rights attached to the office of parish priest, viz., to offerings placed on the altar for the expenses of worship, burial dues, tithes, etc., which in fact they did enjoy. In this there was a remarkable confusion of spiritual with temporal rights, which naturally turned out to the prejudice of the spiritual power (cf. on this "dominium" of laymen, *Imbart de la Tour* l.c., pp. 234-299; Paul Thomas *Le droit de propriété des laiques sur les églises*, Paris, 1906, which does not accept all the ideas of Imbart de la Tour; Paul Viard, *Histoire de la dîme ecclésiastique jusqu'au décret de Gratien*, Dijon, 1909,pp. 205-212 and 219-222).

This intrusion of laymen had, from the moral point of view, appalling consequences. Round about the year 1000, there was complete decay in the Church, worse perhaps than that which took place for the same reasons at the end of the Merovingian epoch. The episcopate

and clergy finished up by adopting the morals of feudal society from which they were recruited as often as not by means of simony (the purchase of spiritual benefits and powers so-called after Simon Magus in apostolic times (Acts viii). These morals were not brilliant and while making as many honourable exceptions as possible, one is forced to recognize that, at that time, most of the clergy were as abandoned and violent as the laity from which they were scarcely distinguishable. Almost all had cast aside the ancient discipline of the Church anent marriage of clerics. In the eleventh century, many of the priests were married men and they were by no means the worst: others were content to live in concubinage. For all, family cares began; they had now to provide for children and take steps to secure for their offspring the continuance of their benefices and functions: had this state of affairs lasted, the clergy would soon have become a narrow caste—a sort of hereditary aristocracy. All this was the fatal consequence of the invasion of the Church by feudal society which was making an effort to absorb it.

"By his decrees, Gregory VII did not aim merely at episcopal investitures; he aimed also at the private appropriation of the churches. On the latter point lay resistance was still more determined, for the interests of laymen were directly threatened. The Popes were forced to relinquish part of their programme and to bridge the difficulty by a distinction which was enunciated in exact terms by Alexander III and finally triumphed after 1160. It consisted in substituting for 'dominium', i.e., lay rights of property over the churches, another but less important right, viz., the *jus patronatus* or right of patronage. The laymen had made the prerogative of taking the curial rights and tithes and of naming the incumbents flow from dominium. After 1160 they had to renounce, without exception, the curial rights and

tithes, and retained only the right of presentation, i.e., the right of indicating to the bishop the cleric whom they desired to be invested. This cleric was immediately appointed and instituted by the bishop, and it was from the bishop alone, according to the logic of things, that he held all his powers; but at the same time the laity still retained together with the *jus patronatus* considerable rights which were to bring in their train fresh abuses" (E. Chénon, *Histoire générale du droit français public et privé*, Paris, 1926, pp. 781-782, pp. 784-785).

It is only in the eleventh century that town parishes make their appearance, for the titular churches of Rome were not proper parishes (their priests from the fourth century and perhaps from the third only prepared the faithful to receive the sacraments of baptism and penance). In fact a council of Limoges 1031 speaks of urban churches where there are baptisms and sermons (*Mansi Concilia*, Vol. IX, c.343). In the twelfth and thirteenth centuries the great Lateran Councils reacted against the persistent abuses of patronage by ordering guarantees to be given in nominating to benefices, collation of benefices within six months, and by condemning provision of benefices which were not yet vacant and the accumulation of incompatible benefices (Third Lateran Council, Canons 3, 8 and 13; Fourth Lateran Council 1215 c.28) The exclusive rights of the parish priest in the matter of paschal communion and annual confession are clearly affirmed (Fourth Lateran Council, Canon 21).

But from the second half of the thirteenth century and especially in the fourteenth, the Popes reserved for themselves a great many benefices in which cures were included. As the titulars could not, in many cases, reside—being often clerics attached to the pontifical court and nominated to cures in France, England, Germany, etc., and having duties to perform in the papal household—the practice of *commendam* became

general. Princes, as well as lay or ecclesiastical patrons, imitated the sovereign pontiffs. As a result, until the French Revolution the great vice of the parochial system was the separation between enjoyment of the benefice and the parochial cure of souls. The titular of the benefice did not reside in it but collected the bulk of the income from it, while his substitute, who actually carried on the ministry, received only an agreed sum. To put it briefly, the parishes were too often farmed out and the country clergy formed a rural proletariat, ill instructed, often in poverty, and engaged in constant money squabbles with the parishioners, the titular of the benefice and the patron.

The Council of Trent multiplied decrees anent benefices with cure of souls and principally on parishes: Session VI (1547) Cap.II de ref., on residence; Session VII (1547) c.45 de ref., against plurality of incompatible benefices; c. 7 and 13 de ref., on a bishop's right of visiting and examining parish priests whom he has not nominated; Session XIV (1551) c.12 and 13, on the right of patronage which can be derived from only endowment, building or grant of the ground for the church (recalling the old maxim "*dos, aedificatio fundus faciunt patronum*") on the presentation of the parish priest by the patron to the bishop for canonical institution (these are the rules laid down by Alexander III); Sesssion XXI (1562) c.4 and 6 de ref., on curates; Session XXIV (1563) c.13 de ref., ordering bishops to assign fixed limits to every parish and only one parish priest, who is to be its proper parish priest and to remain irremovable ; c.17 de ref., ordering those who have several parishes to resign them all but one within six months; c.18 de ref., establishing competition for nomination to cures in order to force all the collators to select incumbents endowed with learning and the necessary qualities; Session XXV (1563) c.16 de ref., forbidding the con-

version of secular benefices with cure of souls into simple benefices even with a perpetual vicar and agreed stipend.

The very number of these decisions indicates the gravity of the abuses that had to be combated. The Tridentine reforms were not really effectively applied in France until the seventeenth century, thanks to the reformation of the clergy by men like de Bérulle, Bourdoise, Olier and St. Vincent de Paul. Immediately after the revolution the country parish began to have a profound and vast influence in France. (The parish priests, especially those in the country, exercised at that time considerable influence of which the parish records in 1789 show frequent traces. They owed it not merely to the still very great living force of religious belief, but also to the fact that they were often the only people in the parish who could read and write, to the charity which they distributed when they had the means of doing so, and to the great share they took in all the incidents of country life even if it was only because of the tithes. They kept the state registers. They could (by an order of August 1735) draw up wills in the presence of two witnesses on condition that they deposited them with a notary immediately after the testator's death. The school, where it existed, was under their strict control.) "In the Sunday sermon," writes M. Sevestre (*Organisation du clergé paroissial à la veille de la Révolution*) "the parish priest appeared as the veritable herald of the secular power; he published edicts, read the war bulletins, summarized the peace treaties and announced births or deaths in the royal family. On occasion he was a servant of justice. When a crime had been committed, he published admonitions from the pulpit in order to secure the discovery of the guilty party. In all the meetings held in his parish, be it for the rendering of accounts for the treasury, the election of a syndic, the

appointment of a schoolmaster or the approval of a midwife, he took the principal part. Nothing that was happening in the midst of his people was foreign to him. He was to be found at the head of all improvements——every progressive measure. He was the first to found charitable bureaux, to establish agricultural prizes and institute arbitration councils. The provincial inspector employed him as an excellent intelligence officer and it is notorious the use Turgot made of him." All this explains the extent of their influence and popularity (M. Marion, *Dictionnaire des institutions de la France*, Paris 1923, art "clergé" pp. 98-99). Nevertheless, abuses were kept up because of the interested views of ecclesiastical patrons (abbeys or chapters).

Mgr. Dulau, Archbishop of Aix, expressed a very moderate opinion when he made the following statement to the assembly of clergy in 1785: "Most of the parish priests are not at the disposition of the Ordinary. In this multitude of patrons to inferior collators, some of them defer very much less to the public interest than to private considerations." This diplomatic language which was necessary in order to humour the powerful lay or ecclesiastical lords speaks volumes.

It must here be repeated that in the midst of iniquitous and sacrilegious spoliation the French Revolution performed the useful task of pruning. It is mainly due to it that the French bishops have been able to keep a hand on their clergy. The agreement of the government demanded by the Concordat of 1801 for nominations to cures was certainly, for them, in a general way, a smaller inconvenience than the numerous consents which they had to have in the collation of benefices under the ancien régime. As for the creation of removable incumbents in virtue of article 60 of the agreement, they did not seem to take it amiss for it was not framed in order to weaken their authority.

Outside of France the free collation of benefices by the bishop made great strides in the nineteenth and twentieth centuries. Nevertheless the right of patronage (with the corresponding right of presentation to cures) was far from completely disappearing. It is still exercised by a number of states, many ecclesiastical moral persons (chapters and convents), and not a few lay folk.

The concordat of 1851 recognized royal, ecclesiastical and lay patronage in Spain (art 26, *Raccolta di Concordate, Mercati*, Rome, 1919, p. 784). The concordat of 1881 with the Republic of Ecuador allows the President to nominate to parishes by electing the parish priest from a list of three candidates presented by the Ordinary, and that by virtue of a right of patronage (art. 14, cf. art 12, ibid., pp. 1007 and 1008; art. 8 of the Concordat with Honduras is similar: ibid., p. 940 (1861)). In this case it was a question of the ancient right of patronage vested in the Spanish kings which the republics of Costa Rica (ibid., p. 802), Guatemala (p. 813), Nicaragua (p. 952, with explicit reference to the ancient rights of Spain in article 9 of the concordat of 1861), San Salvador (p. 964), Venezuela (p. 974), and Colombia (p. 1055) have all equally inherited.

Certain communes of the Swiss cantons have the same rights of patronage. In the Rhine country bishops and chapters alternately appoint the deans. Finally, since the Code, two conventions made with states have maintained the rights of patronage which were still in force in the said states. The Concordat with the Republic of Poland includes the following article: "(21) The right of patronage, whether of the State or of private persons, remains in force until a further agreement is made. The presentation of a suitable ecclesiastic to a vacant post will be made by the patron (after waiting thirty days) from a list of three names submitted by the Ordinary. If, at the end of thirty days, the appoint-

ment has not been made provision of the benefice becomes free. In the case of a parochial benefice, before proceeding to nominate, the Ordinary will consult with the competent minister in accordance with article 19 "which ensures to this minister a right of supervision, in political matters, over all nominations to cures" (see the Canoniste contemporain, 1925, pp. 385 and 386). The Concordat arranged with Bavaria in the same year similarly specifies in article 14 "that the rights of patronage or presentation belonging to the State which are based on special canonical titles remain intact in the hitherto accustomed form" (ibid., p. 107).

(3) *Canonical Theory*

A parish priest is a priest who has received a mission from his bishop to whom he remains subject in the exercise of his functions and who is charged by virtue of his office with the exercise of the sacred ministry in a part of the diocese. He is called "curatus" (curé in French) precisely because he has the cure or care of souls. All bishops have the obligation to divide their dioceses into parishes (Canon 216), and in this connexion the Code merely renews a Tridentine prescription. By virtue of an indult from the Holy See a cure may be united to a moral person, chapter or convent, in which case the moral person is "habitual parish priest," the active ministry being entrusted to a vicar (Canon 451, cf. Canon 471).

The quasi-parish priests of vicariates and prefectures apostolic are assimilated to parish priests. When a region ceases to be under the authority of the Congregation of Propaganda and comes under the common law, its quasi-parishes become parishes (Declaration of the Consistorial Congregation, A.A.S., 1919, p. 346, etc.). Parochial vicars with full parochial power, such as the

vicar of parishes united to a moral person, economic vicar and assistant vicar supplying in everything for the titular parish priest, are similarly assimilated to parish-priests (Canon 451). But military chaplains who are governed by the prescriptions of the Holy See and who, in point of fact, are dependent either on the local Ordinary or on a vicar apostolic called episcopus or Ordinarius castrensis (military bishop) are not parish priests.

(4) *Nomination of parish priests*

Collators

The Sovereign Pontiff has the right to reserve to himself the nomination to any parish whatever and the Code assumes in Canon 455 that there are still pontifical reservations. The present law provides for a certain number of circumstances in which all benefices are reserved to the Sovereign Pontiff (Canon 1435 and Canon 1432 §3, which mention devolution to Rome in the case where an Ordinary has not, within six months, filled a vacant benefice).

In France, since the Concordat, there are no longer any parishes reserved, as such, to the Sovereign Pontiff, but every French parish can be reserved to him in the cases provided for in Canons 1435 and 1432.

The bishop is the normal collator of parishes (Canon 455); a vicar and prefect apostolic are assimilated to him in what concerns quasi-parishes in missionary countries. The vicar capitular can nominate to parishes only after the See has been vacant for a year, and the vicar-general only by virtue of a special mandate (Canon 455).

When a parish is entrusted to a religious order or congregation—a proceeding which requires a special legal formality and does not result from the simple fact that religious are exercising the ministry in a parish just like a parish priest and curates even when they consti-

tute, at the time, all the clergy of the said parish—the competent Superior, according to the constitutions of the order or congregation, presents to the local Ordinary a candidate who shall be a priest-religious of his order or congregation, and the Ordinary shall give such person canonical institution if, after examination, he deems him suitable (Canons 456 and 459).

The right of patronage, which entails the right of presenting to the bishop the pastor of the church of which one is patron, is not suppressed by the Code, but must not, in future, be conceded any more, and Ordinaries are invited to bring about its complete disappearance (Canons 1450-1451). If this right of patronage results in elections or presentations by the people—which is merely to be tolerated—they can take place only with the object of choosing a candidate from a list of three designated by the local Ordinary: in point of fact this is how matters are arranged in certain cantons of Switzerland (Canon 1452).

If a moral person, e.g., a chapter is "parish priest," it presents a suitable subject to the local Ordinary for canonical institution (Canon 471 §2).

Delays allowed

In theory a cure, like every other vacant office, must be filled within six months (Canon 155), but since there may be serious difficulties in complying with this requirement when it is a question of parishes, the Code in this case gives the Ordinary permission to extend the period, if local or personal circumstances so demand (Canon 458).

Qualities Required

The Code lays down the general principle that all offices entailing the cure of souls must be conferred on priests alone (Canon 154), and Canon 453 repeats it with

regard to parish-priests. Formerly, the legislation in force—that of the Council of Trent—required only that the cleric nominated to a parish should receive the priesthood within the year of his taking possession. In ancient times deacons could be put in charge of rural parishes—this was still the case in Spain in the seventh century.

Moreover, in order to govern a parish a whole combination of qualities are necessary, including, above all, learning, zeal and prudence (Canon 453). Preliminary enquiry and examination enable the Ordinary to satisfy himself as to the existence of these qualities. From the point of view of doctrine, the result of the seminary examinations may suffice, if such examinations have had a bearing on all the knowledge, both theoretical and practical, which is necessary for a parish priest. The Ordinary in his selection shall take into account the results of the junior clergy examinations (Canon 459). The most suitable candidate shall be chosen, with the provision that in estimating his merits, learning alone is not decisive, for virtue and common sense are equally necessary in order to rule a parish successfully. The rule of competitive examination was imposed by the Council of Trent for nominations to parishes (Sess. XXIV, c. 18 de reform) and Benedict XIV laid down the requirements with his characteristic precision in his Constitution "Cum illud" (14th December, 1742), which is given at the end of the Code (Document IV); but this legislation, framed by one who had in view the small dioceses of central Italy where there are many more priests than parish priests, is difficult to adopt in places where parishes are numerous and parish priests constitute the majority of the clergy. Even in Italy large dioceses like Milan had, before the Code, got indults dispensing them from competitive examination. In Spain the law has not been applied for a long time except with modifica-

tions which completely alter its character. In France the privileges given to university graduates was a check in the majority of cases, although it was often neglected in others, and since the Revolution there has been no question of competitive examination. Hence the Code has wisely decided that there have to be no innovations in this matter, either in the direction of suppressing or introducing it, until the Holy See has otherwise decided (Canon 459 §4, cf. *Villien Revue du clergé français*, 1911, pp. 277 and following, Volume XLVI).

Lastly, henceforward the rule is quite exact: only one parish priest in every parish, despite any custom or privilege to the contrary (Canon 460 and Commission for the interpretation of the Code, 14th July, 1922), and only one parish for a parish priest, except in the specific cases where several parishes are entrusted, on the same title, to a single parish-priest.

TAKING POSSESSION

A parish priest validly exercises his functions only after he has taken possession of his parish as a result of installation by the local ordinary or his delegate. He must previously have made the required profession of faith (Canon 461).

(5) *Powers and rights of parish priests*

THEIR NATURE

A parish priest possesses ordinary power which is derived from common law which has fixed its character and defined its qualities in such a way that, by the mere fact of canonical institution, a parish priest is not simply a delegate but is charged with certain duties and invested with certain rights which the bishop cannot restrain without lawful reason (Bargilliat, *Droit et devoirs des curés et vicaires paroissiaux*, 1919, p.5). Being thus possessed of ordinary power a parish priest may delegate

even for a whole particular class of duties (*ad universitatem causarum*) except where, as in the case of confession, the law makes an explicit exception.

This power, however, remains subordinate to that of the bishop, who is the Ordinary of every parish and can therein delegate a priest other than the parish priest to execute an individual act of ministry—even against the latter's wish; but such a step would require a very grave reason (Congregation of the Council "In Asturiense" 14th August, 1863 ad 6m).

Moreover, the jurisdiction of the parish priest is for the internal forum alone, excluding all legislative, judicial and coercive power properly so-called, but leaving him the power of government and administration mentioned by canonists which allows him to make remonstrances and to frame regulations. A parish priest cannot dispense except in cases explicitly mentioned by law, e.g., matrimonial impediments in case of danger of death, or in urgent cases (the latter being restricted to impediments which are occult) when it is not easy to apply to the Ordinary (Canons 1044 and 1045), or from observance of holidays of obligation, or of fast and abstinence in single cases when it is a question of individuals and families (Canon 1245). A special disposition of law is necessary on this point for, in theory, only the legislator can dispense from the law.

The powers of a parish-priest must be characterized by a certain stability, for every cure is at least an office and every office must be stable; but this stability does not always mean irremovability. Before the Code, the question was fiercely debated. The organic articles attached to the Concordat of 1801 had created the situation of priest-in-charge revocable at the will of the bishop without any legal procedure (*ad nutum*), and this French situation passed over into Belgium owing to the French occupation under the first Empire. (The "succursalistes"

mentioned by the organic articles were, in the opinion of de Portalis, merely curates, but in fact they quickly became parish priests.) Some bishops had been too free with their power of displacing these removable parish priests; pamphlets were published against the removability of parish priests which were charged with being anticanonical in conception. Rome, when consulted, ordered matters to remain where they were but had never, before the Code, even used the expression removable parish priest. Finally, this expression has been privileged to find a place in Canon 454 §2, and in title XXVIII of Book IV on the displacement of movable parish priests. It must also be noted that the Code requires a regular and definite procedure for the displacement of all parish priests movable or irremovable.

A parish priest belonging to a religious order is removable at the will both of his superior and the Ordinary, and there is no necessity that there should be agreement between them. The character of movability or irremovability is attached to the parish itself. Every new parish must be irremovable, Canon Law remaining more favourable to the irremovability of parishes rather than to their movability by reason of the very clear indication given by tradition in the first sense. Nevertheless the bishop could, if special circumstances demand it, declare, after consulting the Cathedral chapter, that a new parish is to be movable. Old irremovable parishes cannot become movable except by virtue of an indult from the Holy See, the change *vice versa* remaining possible at the pleasure of the bishop, with the advice of the Cathedral chapter, but not to a vicar capitular (Canon 484). All quasi-parishes are movable.

Extent of Parochial Jurisdiction

A parish priest possesses jurisdiction which is both territorial and personal. He has authority not merely

over those who have a domicile or quasi-domicile (determined by the situation of the main door) in his parish, but also over the faithful who have no domicile or quasi-domicile and are actually living in it (vagi) (Canon 94, see above). Moreover, in certain respects he remains the pastor of those who are his parishioners by domicile or quasi-domicile but are not actually resident in his parish, since he can give them absolution anywhere at all. The local Ordinary can, for a just and grave cause, withdraw from the parish priest's authority religious communities and pious houses, which the law does not already exempt from parochial jurisdiction. The point was controverted before the Code although the custom in France and Belgium was in this sense.

Functions Reserved to the Parish Priest

A certain number of duties are reserved to the parish priest; no one can perform them within the parish without the express authority and, if necessary, the delegation of the parish priest in favour of such person, and the parishioners have no right, apart from this authority or delegation, to have these duties carried on by other priests outside of the parish. Exceptions to this principle are allowed only by virtue of express dispositions of law, by privilege or by contrary custom.

These duties are:

(1) The conferring of solemn baptism save with dispensation from the parish priest or local Ordinary—a dispensation which is presumed in case of necessity—every person having to be baptized in his own parish if he can be brought there without difficulty or delay; the parish priest of another parish is not allowed to baptize his own parishioners within the parish of one of his colleagues without permission from the latter or the local Ordinary (Canons 462, 738 and 739).

(2) The carrying of Holy Communion publicly to the

sick within his parish even if they are not parishioners (Canon 848); in order to take Holy Communion privately to the sick, authority—at least presumed—from the priest who has the custody of the Blessed Sacrament is sufficient (Canon 849 §1).

(3) The right to see —even by previous examination— that children do not make their First Communion before attaining the use of reason and possessing the other necessary dispositions, as well as the right to see that children who are in a fit state to receive the Holy Eucharist approach it as soon as possible (Canon 854 §5, which is a useful and exact statement added to the decree "Quam singulari" by the Congregation of the Sacraments, 8th August 1910).

(4) Taking Viaticum, even privately, and the administration of Extreme Unction with the following exceptions: the last sacraments are given to the bishop by a member of the Cathedral chapter (Canon 397 §3); the superior of a house of religious clerics has the right to give Viaticum and Extreme Unction to those who live there day and night (Canon 814); the case of necessity (Canons 848 §2-938 §2) or of permission at least presumed; (the Code does not continue the excommunication formerly directed against regulars giving Extreme Unction to seculars without authority from the parish priest or local ordinary).

(5) The publishing of banns of ordination and marriage, performing the marriage ceremony (with power to delegate but only within the parochial boundaries), and imparting solemn nuptial blessing.

(6) The conducting of the funeral service unless the deceased had lawfully selected some other church (Canon 1216).

(7) The ritual blessing of houses and baptismal fonts, solemn blessings outside of the church and the conducting of all processions held within parochial territory.

Additional Parochial Rights

From the temporal point of view and inasmuch as the "Lord ordained that they who preach the gospel should live by the gospel" (I Cor. ix, 14), the parish priest has a right to the dues which custom or a legitimate tax gives him, and which are called stole fees, on condition that nothing beyond these is demanded, and that under pain of restitution. Since stole fees do not constitute a salary but are merely an offering to the parish priest on the occasion of his exercising his functions, they come to him even if another person has carried them out, the substitute having a right only to the excess offered to him personally ; but a parish priest is bound to exercise his ministry without fee on behalf of those who cannot pay the prescribed dues.

The parish priest is the administrator of goods destined for the repair and decoration of the church and for divine worship, and of offerings made to the parish (and not to himself as a private individual) (Canons 1182 and 1184).

In spiritual matters, the parish priest can absolve his own parishioners anywhere, and during the period fixed for making Easter duties he can absolve them from sins reserved by the Ordinary if there is no censure attached to them (Canons 873 §1, 881 §2, and 899 §3). He can dispense them from matrimonial impediments, from observance of holidays of obligation and from fasting and abstinence in the circumstances indicated above.

(6) *Duties of parish priests*

General Principle

The parish priest has the cure of souls (except in the case of persons exempted) within the previously defined limits of his jurisdiction (Canon 464 §1).

Residence

The parish priest must reside within his parish or at the least near enough to be able constantly to exercise his ministry in it (Canon 465 §1). He may absent himself for two months at most each year (Canon 465)—a period which the ordinary may reduce or extend for grave reasons. Whenever he leaves his parish for more than eight days, he must have written authority from the local Ordinary (which may be combined with his "*celebret*"—a certificate that he may freely be allowed to celebrate Mass outside of his diocese) and must, with consent of the said ordinary, appoint a substitute.

In case of urgent absence he must at least notify the Ordinary. Any unlawful absence is punished by proportionate forfeiture of the income of his parish (the revenue of his benefice) (Canon 2381 §1); moreover, a special procedure is provided against a parish priest who does not observe the law of residence (Canons 2168-2175, 2381 §2). Fortunately absenteeism is much less rife in our days than formerly, and the prescriptions and sanctions of the Code thereanent do not possess the stern actuality of the measures adopted by the Council of Trent (Session xxxiii, c.1 de reform).

Mass for the People

A parish priest, economic vicar, and vicar substitute who is taking the place of a parish priest, must, on Sundays and certain other days, apply, on behalf of his parishioners, that portion of the fruits of the Mass which can be given a special destination. These days are: (1) the common law holidays of obligation (which are more numerous than those laid down by particular law) viz., Christmas, the Circumcision, the Epiphany, Corpus Christi, the Immaculate Conception and the

Assumption, St. Joseph, SS. Peter and Paul and All Saints; (2) the Mondays and Tuesdays after Easter and Whit Sundays, the finding of the Holy Cross, the Purification, Annunciation and Our Lady's birthday, the dedication of St. Michael, the Nativity of St. John Baptist, the feasts of the Apostles, St. Stephen, the Holy Innocents, St. Laurence, St. Sylvester, St. Anne, and the feasts of national and local patrons. (List given by the Sacred Congregation of the Council reproducing a catalogue of Pope Urban VIII, Sacred Congregation of the Council 28th December, 1919). This makes a total of eighty days (taking into account occasions when Sundays and feast days coincide).

Parochial Ministry

The parish priest is bound to celebrate the divine services, to administer the sacraments to the faithful even at the risk of his life if it is a question of baptism and penance or extreme unction for those who cannot make their confession in cases where the need is urgent. He must know his parishioners, lead them back to good if they have strayed, busy himself with the poor and instruct the children in the Christian life (Canon 467).

As regards children, the Code definitely lays down that the parish priest must prepare them by a series of instructions, especially during Lent, for the reception of Penance, Confirmation and First Communion, after which he has the obligation of completing their religious instruction (Canons 1330-1331).

In Great Britain, our First Communion classes go far beyond the bare requirements of common law. Adults must similarly be instructed by having the catechism explained to the assembled faithful on Sundays and holidays of obligation at the hour best calculated to catch the greatest number, the explanation being

adapted to the varying capacity of the congregation (Canon 132). In practice the best method of fulfilling this obligation laid down by the Code is by a fixed scheme of sermons imposed on all the parochial clergy charged with preaching. These sermons are moreover obligatory at the Mass which is attended by the greatest number of people (note that the Code does not say the High Mass—Canon 1344).

In addition a short instruction at all the Masses on Sundays and holidays of obligation is both praiseworthy and desirable (Canon 1345). During Lent and Advent sermons must be more frequent (Canon 1346). In a general way preachers must, in the first place, teach the faithful what they must do and believe in order to achieve salvation, avoiding any considerations which are profane or too abstruse "not in the learned words of human wisdom, but in the doctrine of the Spirit" (I Cor. ii, 13), not preaching themselves but Christ crucified (Canon 1347).

Ordinaries must take care that a mission is given in each parish at least every ten years (Canon 1349), for the Church always maintains her desire for spiritual conquest while at the same time proclaiming that no one must be compelled to embrace the Catholic faith (Canon 1351). A parish priest must manifest real paternal charity towards the poor and needy (Canon 467) and he must go similarly with special charity to the assistance of the sick, especially those who are near to death in order diligently to secure for them the consolation of the sacraments, to recommend their souls to God in their last moments, and at the same time to give them the apostolic blessing accompanied by the plenary indulgence (Canon 468). He has also to watch that neither faith nor morals are attacked in his parish, especially in public or private schools, and to support or establish works for the furthering of charity, faith and piety.

The fourth Book of the Code contains a title (XXXII) on the manner of proceeding against a parish priest who is guilty of neglect in the exercise of his duties.

Parochial Records

The parish priest must keep registers of baptisms, confirmations, marriages and deaths and a register of persons in which is to be inserted the spiritual condition of every family (Canon 470 and Title XII of the Rituale Romanum). He should also possess a seal and archives.

CHAPTER II

CURATES

Historical—Curates substitute and auxiliary—Present discipline

Historical

The curate-substitute appears first of all in a Cluny charter of 926 where we see a cleric receiving the usufruct of the church of the villa belonging to a certain Tervicus, delegating its spiritual government to a curate —*vicarius sacerdos* (Imbart de la Tour, *Paroisses rurales* p. 247). The institution of curacies allowed archdeacons to gather several parishes within their control. The Decretals (*de officio vicarii*, Title 1, 28) and the Council of Trent mention only a curate substitute and not an auxiliary curate in conformity with etymology, for a curate is he who takes the place of another "*qui vices gerit.*"

In 1632 for the first time, there is question of an auxiliary, assisting, but not replacing, the parish priest. In 1768 there were, in Paris, for some fifty parishes, sixty-three vicars and eight sub-vicars, and eight hundred and twenty-five resident priests of whom eighty were for the single parish of St. Eustache alone (*Lesêtre, La paroisse*, Paris, 1908, pp. 114 and 115). "These priests were necessary for discharging the obits and foundation masses, carrying out the duties of many confraternities, and assisting the parish priests and vicars in their ministry. Thus at St. Séverin there were eighteen to twenty-two

daily masses founded by will" (ibid.). At the time when the French Revolution broke out, there were in Paris two curates for a parish, sometimes only one and seldom three: in all thirty-eight first curates, thirty-two second curates in 1791, but to each parish was attached a community of priests, often numerous, whose personnel fluctuated considerably. After the Concordat of 1801 and up to 1848 the parish priests of Paris chose their curates with the approval of the Archbishop. There were grievances among the curates—"grievances which were sometimes not entirely devoid of foundation"; as early as 1830 Mgr. de Quélen had recognized that some reform in this respect was absolutely essential (Pisani, *L'Eglise de Paris pendant la Révolution*, Vol. II, pp. 27, etc. Vol. IV, pp. 224-225).

Present discipline

The vicar-parish priest is briefly the real parish priest of a parish united to a moral person; as a general rule he is presented by the interested moral person or in its name (chapter or convent) to the local Ordinary, who gives him canonical institution (Canon 471).

The economic vicar administers a vacant parish; he is also a real parish priest who, however, is bound to apply the general rule in the case of vacancies, viz. "during a vacancy nothing new is to be done", *sede vacante nihil innovetur* (Canons 472-473).

The substitute vicar takes the place of a parish-priest who is absent or not definitively deprived of his cure. In the first case he is appointed by the parish-priest himself with the approval of the Ordinary (the latter must at least be notified if the absence is unforeseen). He is, at least, delegated for all the work (Canons 465-474). The vicar coadjutor takes the place entirely or partially of a parish-priest who cannot conveniently

fulfil the duties of his charge. He is a real parish-priest if he takes entire charge (Canon 475).

Assistant vicars are those who in current language are called by the name of curate. They are the parish priest's assistants in cases where he cannot fulfil all the duties of his charge, either because of the large number of parishioners or for some other reason such as distance of large numbers of the faithful from the parochial centre.

Appointment

In the present legislation this is done by the local Ordinary except in the case where a parish priest belonging to a religious order or congregation is presented by the religious superior; but the parish priest must be consulted (Canon 476).

Duties

The ordinary curate possesses only delegated power which is determined by the actual terms of his mandate. If he is delegated for everything he can sub-delegate but only for individual cases.

CHAPTER III

RECTORS OF CHURCHES

Their duties and rights

RECTORS are priests put in charge of a church which does not belong to a parish, chapter or religious community. They are appointed by the local Ordinary except in the case of presentation by the superior if it is a question of a church dependent on exempt religious, or by a patron. If a church is united to a seminary, the superior of the seminary is the rector unless where the local Ordinary has decided otherwise (Canon 480). The rector must refrain from doing the duties reserved to the parish priest, but can celebrate the services without prejudice to the parochial ministry. It is he or the lawful superior who authorizes the celebration of Mass and sacred functions in his church. The Ordinary can bind the rector to celebrate Mass and the services at such hours as will allow the faithful, who cannot, without grave inconvenience, come to the parish church, to attend. He can also notify him to make the announcements, teach catechism and explain the gospel (Canon 483). The rector cannot refuse permission to the parish priest to take the Blessed Sacrament from his church in order to bring it to the sick. It is his duty to exercise vigilance that the sermons preached in his church are in conformity with Canons 1337-1342, that the services are regularly conducted therein, that the church property is prudently administered and the house of God treated with respect. His appointment is revocable at the will of the Ordinary—"*ad nutum*" (Canon 486).

PART V

THE LAITY

CHAPTER I

INDIVIDUAL RIGHTS OF THE LAITY

Legal status—Right to spiritual benefits—Right to justice in legal proceedings, punishments and labour—Rights of civil authorities.

(1) *Legal status*

In the first place the laity possess a legal status which specifies exactly the rights of various ecclesiastical authorities in their behalf. We have dealt with this in the introduction on canonical personality.

(2) *Right to spiritual benefits*

General Principle

The laity have a right to receive from the clergy spiritual benefits, especially such as are necessary to their salvation (Canon 682).

Right to the Sacraments

Parish priests, as we have seen, are bound to administer the sacraments to their parishioners whenever the latter ask for them lawfully (Canon 467 §1). In strict law, the only people who can ask unlawfully are those who are canonically unworthy, viz., excommunicated

persons and public sinners who ask for the sacraments even in private, and occult sinners who present themselves in secret ; the latter cannot be publicly refused the sacraments because of scandal on account of the ensuing loss of reputation and the fear which might repel other members of the faithful. Request for the sacraments must normally be allowed, not only when there is a precept or necessity to receive them, but also when it is inspired solely by devotion (Wernz-Vidal, *Jus Canonicum*, Vol. II, Rome, 1928, p. 791).

Priests with the cure of souls are bound in justice to accede to such a request. In fact according to St. Alphonsus there is a tacit contract between a pastor and his flock; the latter owe to him the resources necessary for his decent maintenance, while he, in return, is bound to provide for their spiritual needs (*Theologia Moralis*, Book IV, No. 58). Parish priests are bound, even at the risk of their own lives, to administer such sacraments as are necessary for salvation ; this is, at least, the common teaching.

The faithful can ask for the sacraments even from an excommunicated priest, especially if there are no other priests available, and they are allowed, in danger of death, to have themselves absolved by an excommunicated priest who is "to be avoided" (*excommunicatus vitandus*) (Canon 2261). The minister of a sacrament must not under any pretext whatever, directly or indirectly, demand anything beyond the dues fixed by the provincial council (Canons 730 and 1507), and a parish priest must not refuse his ministry to such as cannot pay the whole or part of the dues (Canon 463 §4 which deals with the question of gratuitous services). A parish priest cannot refuse baptism to his parishioners and in case of danger of death must administer it even at the risk of his own life. Confirmation is not necessary for salvation; nevertheless a bishop is bound to confer it on his subjects

who ask for it properly and reasonably, especially at the time of diocesan visitation (Canon 785 §1).

Parish priests and all other priests with the cure of souls have a strict obligation in justice of hearing personally, or by means of some other priest, the confessions of their parishioners at their request—even if it is reasonable and no more. In case of necessity all priests in possession of faculties for confessions have a duty in charity of hearing them; but if there is danger of death this duty is incumbent on any priest whatsoever (Canon 892). As for Holy Eucharist every baptized person who is not absolutely forbidden by law can and must be admitted to Holy Communion (Canon 853). In case of danger of death it is a duty to admit to the reception of Holy Eucharist children who can distinguish it from ordinary bread and are capable of adoring it: apart from this case, Holy Communion cannot be refused to children who know the mysteries which are indispensably necessary for salvation (the existence of God, Creator and Rewarder, the Blessed Trinity and the Incarnation) and show a devotion corresponding to their years. Parents have the right, in conjunction with the confessor, of deciding as to whether these conditions are verified while, at the same time, the parish priest has the right and duty to check their decision (Canon 854). The parish priest is obliged to administer Extreme Unction to his parishioners in danger of death or to have it administered to them (Canon 939): in case of necessity every priest is bound in charity to give this sacrament.

Right to Ecclesiastical Burial

A dead Catholic must be buried from his own parish church unless he had previously chosen some other church (Canon 1216), and the parish priest has the duty of performing the obsequies (Canon 1230). Ecclesiastical burial can be refused only to apostates, heretics,

schismatics, freemasons and such like, persons excommunicated or interdicted by explicit sentence, suicides, duellers, those who have left instructions for their bodies to be cremated, and to other public and open sinners (Canon 1240). Further it must be the case that such persons have before dying given no signs of repentance.

(3) *Right to justice in legal proceedings*

Everyone, unless explicitly forbidden by law, has the right to take proceedings in an ecclesiastical court. Even an excommunicated person may do so unless he is "*vitandus*", in which case he can personally or by proxy institute only proceedings relating to the legality of his excommunication, or proceedings to save him from some spiritual injury (Canon 1654). Thus, if a spouse alleges facts founding a serious probability that his or her marriage is null, the judge must allow such person to lead proof of these facts under penalty of denying him justice. But if it were a case of dispensing an unconsummated marriage the procedure would be different, because the dispensation in question is a favour—a "grace"—of the Sovereign Pontiff to which no one has, strictly speaking, any right.

Moreover, every litigant has the right to a guarantee that the proper procedure will be observed; to appoint an advocate, to the hearing of his witnesses unless they come under some legal exception, to the services of expert witnesses, and to the observation of the regular forms and time for appeal.

The poor have the right to have their cases heard gratuitously if they are unable to pay, or to a reduction of the legal expenses if they cannot pay them in full (Canon 1914).

Right to Justice in Punishments

A guilty member of the faithful has the right to demand that an ecclesiastical judge should take into account every circumstance which lessens his responsibility, e.g., age, sex, pressure brought to bear on him, etc. It is noteworthy that the Code does not admit the usual Civil Law principle that no one is presumed to be ignorant of the law, but declares, on the contrary, that the violation of a law which is inculpably unknown is not imputable (Canon 2202). If the offence committed has a censure attached the censure is not incurred if its existence is unknown, owing to ignorance which is not gravely culpable; even in certain cases specified by law, it is only when ignorance has been feigned in order to evade the punishment that such punishment is incurred. Since censures (excommunication and interdict) are medicinal penalties whose primary object is to secure the amendment of a delinquent, he must be absolved as soon as he has repented. Finally, speaking generally, delinquents are entitled to expect from ecclesiastical authority justice tempered with paternal kindness. Bear in mind, says the Code, the recommendation (*monitum*) given by the Council of Trent, Session XIII de reform, Chap. 1:

"Let Bishops and other Ordinaries remember that they are pastors not bullies, and that they must govern their subjects in such such a way as not to lord it over them, but to love them as children and brethren. Let them strive by exhortation and admonition to turn them from evil in order not to force themselves to inflict the punishment they deserve; if nevertheless, human frailty leads their subjects to fall into sin they must observe the apostolic injunction 'to reprove, entreat, rebuke in all patience and doctrine' (II Tim. iv, 2), seeing that benevolence towards those to be corrected often effects more than austerity, exhortation more than threats,

charity more than violence. But if, on account of the grievousness of the transgression, there be need of the rod then is rigour to be tempered with gentleness, judgment with mercy, severity with lenience in such a way that discipline, so salutary and necessary for the people, may be preserved without harshness, and those who are chastened may be amended, or if they will not repent, that others by the wholesome example of their punishment may be deterred from vices."

Right to Justice in Conditions of Work

The mind of the Church on the social question is manifested in the following Canon: "All administrators of ecclesiastical property, and especially those who are clerics or religious, must, in employing workmen, observe quite definite rules. They must give a fair and just wage, i.e., a wage which ensures suitable subsistence corresponding to the labour involved. They must allow their employees time to fulfil their religious duties and never make it necessary for them to neglect their own homes or to omit the practice of thrift (i.e., they must therefore encourage insurance and pension schemes). They must never impose labour which is excessive or unbecoming to the age and sex of their employees; consequently they must observe the laws as to hours of employment, weekly rest and the employment of women and children in manual labour (Canon 1524)." Here we have a complete synopsis of the Encyclical "Rerum Novarum."

(4) *Rights of civil authorities*

Canon Law recognizes that the civil authorities have very real rights in matters of religion. If a concordat or the office of patronage allows them to present candi-

dates for ecclesiastical benefices or employments, the latter are certainly not provided by the very fact of presentation by the civil authorities, but they have, on this account, the right to be invested, provided they are canonically suitable, even if the superior does not consider them the most worthy candidates for the office.

In the case of a crime belonging to the mixed forum, i.e., justiciable at the same time by ecclesiastical and civil tribunals, Ordinaries must not, as a rule, intervene if the guilty party is a layman and if the civil power deals with the matter in a manner sufficient to safeguard the public good (Canon 1933). Heads of states (of republics as well) and their wives have the right to enter, with their suites, the enclosure of nuns (Canon 600). Royal personages may be buried in churches (Canon 1205). Heads of states, their children, and their immediate successors can be judged only by the Sovereign Pontiff himself (whether they are pursuers or defendants)—here again the Code draws no distinction between monarchies and republics (Canon 1557 §1 No. 1).

Similarly, it is the Pope alone who can inflict a penalty upon them or declare that it has been incurred by them (Canon 2227 §1). The Church shows respect to power, inasmuch as all power comes from God.

To these substantial rights may be added purely honorary privileges. Canon 1263 lays down that in church the civil authorities may have reserved for them a special place befitting their dignity and rank, on condition that the liturgical rules are observed. In the East the question or liturgical honours to be accorded to the representatives of the different European nations is one of great importance; quite recently an agreement between the Holy See and France laid down definitely the privileges to be enjoyed by the French representative.

CHAPTER II

COLLECTIVE RIGHTS OF THE LAITY—LAY ASSOCIATIONS

Associations in general—Secular third orders—Pious unions and confraternities—Archconfraternities and primary unions.

(1) *Associations in general*

A DISTINCTION must be made between (1) Associations which are unlawful by reason of their secrecy (i.e., societies in which an oath of secrecy is taken not to be revealed even to ecclesiastical superiors, and where unknown leaders are obeyed (Decree of the Holy Office, 10th May, 1884), even if they consist exclusively of ecclesiastics who claim to pursue only the good of the Church), which are explicitly condemned, such as free-masons and similar societies which plot against the Church or lawful authority and whose members incur an excommunication simply reserved to the Sovereign Pontiff (Canon 2385) as being seditious or suspected persons, or as attempting to evade the lawful authority of the Church.

(2) Associations which are not recognized by the Church but which are not on that account unlawful—a fact which implies liberty of combination in Canon Law (special provisions are made in this case later on).

(3) Associations approved by the Church.

(4) Associations constituted as moral persons by a formal decree emanating from competent authority.

The Church recognizes only those associations which

have been established or at least approved by her (Canon 686).

Division

(1) The object of the Third Orders is the pursuit of perfection.

(2) Pious unions called "*sodalitia*," if they form an organized body, devote themselves to works of piety and charity.

(3) Confraternities devote themselves to public worship; before the Code this name was bestowed on all pious associations other than the Third Orders.

Legal Status

The establishment or approbation of pious associations emanates from the Pope, local Ordinaries, or those who have received the power by indult; on the occasion of granting a certificate of establishment no fee can be demanded beyond the necessary tax to cover expenses (Canon 686). A decree of establishment alone erects an association into a moral person. The name of the association must have reference to some devotion approved by the Church. Associations must possess statutes approved by the Holy See or local Ordinary. Apart from special privilege, they are subject to the jurisdiction, supervision, and visitation of the local Ordinary, even if they have been established by the Holy See. Associations, which the Holy See has allowed exempt religious to set up in their churches, are nevertheless, withdrawn from the jurisdiction of the local Ordinary as far as their internal discipline is concerned (Canon 690). The local Ordinary grants authority for collections, and account is rendered to him as to how the proceeds are expended as well as funds derived from the offerings of the faithful. Only associations which are erected into moral persons can possess property, in which case it is the local Ordinary

who supervises the administration thereof; the parish priest has no power to do this unless the Ordinary has so decided (Canon 691).

Members

In order to enjoy its rights and privileges a person must be duly admitted and registered in the association; this alone is sufficient. A person who is absent or does not know that his name has been inscribed cannot become a member. Non-Catholics, members of condemned societies, those who have incurred censures the knowledge of which is notorious, and public sinners are all excluded. Names are expunged from the list of members by order of the local Ordinary or superior, if an indult allows the establishment of an association by a religious institute (Canon 696).

Life

Associations hold meetings, regulate their internal affairs, elect temporal administrators, office bearers, and servants and manage their property. Apart from indult, their directors and chaplains are nominated by the local Ordinary and they bless and impose the habit and scapular. As far as sermons are concerned they must abide by the common law laid down in Canons 1337-1342.

Suppression

Ordinaries can suppress all associations which have not been established by the Holy See. In strict Canon Law, non-approved associations cannot possess property, but the powers of Ordinaries are restricted in their regard. The Ordinary may intervene in respect of collections, legacies and trusts (Canons 1503, 1515 and 1516, cf. A.A.S. 1921, p. 135, with reference to the Society of St Vincent de Paul at Corrientès in the Argentine).

(2) *Secular Third Orders*

From the eleventh century on, the oblates of St. Benedict became widespread, but without forming associations in the proper sense of the term. On the other hand, at the beginning of the thirteenth century we notice a large number of pious associations of "*humiliati*" or penitents, and brotherhoods, etc. This led a certain number of Third Orders to detach themselves from the great orders. We use the word "detach" and not "affiliate" because the following is an example of what happened in the case of the disciples of St. Francis:

(1) The brothers of penance originally formed part of the primitive Franciscan family at that time undivided and not yet an order. (2) They were cut off from the rest of the family between 1219 and 1221 and established as an independent body (Mandonnet, O.P. *Origines de l'Ordo de Pœnitentia*, Fribourg Congress 1897—an analysis of which is given by Boudinhon in the Canoniste contemporain of the same year, p. 519). The Dominicans, Carmelites, Premonstratensians, Augustinian Hermits, Minims, Servites and Trinitarians also had their Third Orders, many of which subsequently became proper religious institutes under the name of Third Orders Regular.

Erection and Admission

Every Third Order is erected by the Holy See (Canon 702); local bodies (*sodalitates*) may be created with the consent of the local Ordinary. Apart from dispensation, a religious cannot be a member of a Third Order.

A secular may transfer from one local sodality to another or from one Third Order to another but cannot, apart from indult, belong to several Third Orders.

Privileges

They may take part in processions, funerals and other

public ceremonies but must do so with their cross and banners. Indulgences given to the First Order (the First Order consists of male religious, the Second Order of female religious) are not communicable to them apart from indult. (The Franciscans possess this indult.)

(3) *Pious unions and confraternities*

History

In the ninth century in the West (much earlier in the East) we observe the existence of associations which partake at the same time of the nature of mutual aid societies and confraternities such as guilds, brotherhoods, etc. These associations disappeared in the tenth century, but from 1100 on the movement for "communes" brought about their resurrection under the form of corporations which were, moreover, a kind of syndicate. At the same time and even earlier, confraternities for the purpose of prayer were formed which included among their members kings, princes, bishops, priests, laymen and founders of churches and convents. Associations were subsequently formed for the observance of the "truce of God" (twelfth century) and for peace (thirteenth century). Finally, confraternities of penitents affiliated to the mendicant orders remained as confraternities without becoming Third Orders; they increased at an amazing rate in the Middle Ages and even in modern times, and it is their multiplication which partly explains the large number of priests attached to certain parishes (80 at Saint Eustache in Paris in the eighteenth century in order to serve the said confraternities).

Erection

Confraternities require a formal decree of erection; pious unions need nothing more than the approval of the

Ordinary, after which they are capable of obtaining spiritual favours (Canon 708). Both types must take their names from some attribute of God, some mystery of religion, feast of Our Lord or of Our Lady, of a Saint or from the work for which they have been established. Several confraternities or unions cannot be erected in the same locality except in the case of a large town, but the Code itself requires that there be in every parish a confraternity of the Blessed Sacrament and a confraternity of Christian Doctrine, and indults are accordingly granted. Women may be members of confraternities but only to the extent of sharing in their spiritual benefits (Canon 709). Confraternities or pious unions can be erected only in churches, public oratories (i.e. open to the public at certain hours) or semi-public oratories (i.e., for the use of a whole community and not merely for individuals). Only associations of women or pious unions which occupy themselves solely in prayer and the gaining of spiritual favours can be allowed in the churches of religious.

Life

Associations erected by religious share in the Order's spiritual favours only to the extent to which the Holy See has declared that the latter are communicable, and such concessions must be mentioned in the certificate of erection. The confraternities must attend in a body the ceremonies prescribed by the local Ordinary, wearing the badge and habit authorized by him. Confraternities and pious unions must not prejudice regular attendance at parochial services by the ceremonies which they perform even in their own churches, and it is for the local Ordinary to decide whether or not this is the case; but, saving this provision, they can celebrate in these churches all non-parochial services without the consent of the parish priest. Meetings of these associations are pre-

sided over by the bishop or his delegate (who may be the parish priest) and he must be notified thereof.

(4) *Archconfraternities and primary unions*

Nature

The essential characteristic of these associations is that they have power to unite to themselves other associations. This power comes to them from the Holy See alone and, apart from any special provision, does not imply any power to unite with associations having a different name and object.

Affiliation to other Associations

By affiliation to them, other associations get the communication of all privileges past and future belonging to these archconfraternities or primary unions, but the latter acquire no jurisdiction whatever over the affiliated bodies by the mere fact of affiliation. In order that the affiliation be valid the following provisions must be observed:

(1) The association which desires to be affiliated must be canonically erected and not already affiliated to any other association.

(2) The Ordinary of the place where the association exists must consent to the affiliation and also grant a letter of recommendation.

(3) A list of the spiritual favours enjoyed by the archconfraternity attested by certificate from its Ordinary must be filed.

(4) The affiliation must be permanent.

(5) No fee must be charged apart from the expenses of affiliation and even free-will offerings must be refused.*

*Election or presentation to ecclesiastical offices, of which we shall speak in the following chapter, is also the exercise of a collective right when it is done by a social body, parish, district, etc.

CHAPTER III

PARTICIPATION IN THE LIFE OF THE CHURCH

Election or presentation to ecclesiastical offices—Share in temporal administration—Functions exercised in the service of the Church or of the faithful—General co-operation.

(1) *Election or presentation to ecclesiastical offices*

Election or presentation by patrons formerly occupied an important position in the collation of ecclesiastical offices and benefices, but it was never imagined that election or presentation by a patron signified the transmission of spiritual powers. Nomination by the government also played a large part in the past in this respect. More than one trace of these old practices still remain, but the obvious tendency of the Holy See is to reduce them more and more. Dislike of the right of patronage, especially when it entails popular election or presentation, is marked (Canons 1451 and 1452), and in the latter case the law insists on a "*terna*" of candidates for the episcopate (this was already done before the Code). As for nomination by the government recent events show that there is a desire to substitute in its stead a simple right of supervision or veto on the part of the civil power for purely political reasons. (Agreement with France, concordats with Bavaria and Poland.)

(2) *Share in temporal administration*

We are here confronted by a development which is almost the opposite of that which has just been indi-

cated. St. Gregory in 599 and the Second Council of Seville in 618 condemned any participation by laymen in the administration of ecclesiastical property; but as the feudal system often diverted such property from its original destination (i.e., the purposes of divine worship), appeal had to be made to the generosity of the faithful who naturally demanded some control over the expenditure of their offerings. In the Middle Ages for the first time we observe the fabrics: it was in the Middle Ages that they were organized or came into existence. The fabric is, in its primitive sense, the construction of the edifice; subsequently it is the fund which pays for the work; finally it is the staff which administers this fund and in this we have the complete history of the word. "The parishioners, having provided the fund, had naturally some right over it; hence they took part in the appointment of those who were in charge of the fund (vestrymen or churchwardens). The mission of the latter was extended. The system of fabrics became general. The vestrymen were destined to become the representatives of the temporal interests of the parish. In one place they would be appointed by the parishioners, in another the rights of the parishioners would be combined with those of the parish priest. The general meetings of the inhabitants were the basis of this system. If the system of fabrics became general, if it spread all over the country, it was apparently because ecclesiastical property was diverted from its original destination. Consequently the parishioners had to assume the burden of the expenses of worship; they established a fund earmarked for these expenses which was destined almost everywhere to cover the revenues of ecclesiastical property and tithes" (P. Viollet, *Histoire des institutions politiques et administratives de la France*, Vol. II, Paris 1898, pp. 364-366).

The churchwardens (matricularii) were originally

poor men registered in a church—inscribed in its "*matricula*." "They were at the disposal of the head of the church and of the custodian of the sanctuary. If need were, they would lend a helping hand to the ministers of the church. They constituted themselves defenders of the right of sanctuary which they enjoyed. Possibly from the end of the seventh century they were commonly charged with the police and upkeep of the sanctuary. Unconsciously this brotherhood of poor men, supported by the charity of the Church and the alms of private persons, was transformed into a service of wardens and ushers for the sanctuary" (Mgr. E. Lesne, *Histoire de la propriété ecclesiastique en France*, Vol. I, *Epoques romaine et mérovingienne*, Paris 1910, pp. 383-384.)

A final change transformed these subordinate employees into important officials delegated by the residents for the administration of parochial property. In the seventeenth and eighteenth centuries the church wardens exercised considerable influence on parochial and municipal life. At this period they were "elected in the towns by a meeting of the important parishioners: in Paris they were selected from among the notaries, solicitors and wholesale merchants. In the country they were chosen from the respectable residents who had a certain affluence and education. The churchwardens settled the scale of fees for bench rents and burials, discussed the acceptance of legacies and foundations, appointed the cantors, beadles, bell ringers and even the preachers for Advent and Lent; together with the parish priest they had the custody of the keys and church furniture. The parish priests were present at their deliberations and took the chair, and in fact the churchwardens frequently played the part of municipal magistrates" (M. Marion *Dictionnaire des institutions de la France aux* XVII*e et* XVIII*e siècles* under the word "mar-

guiller," p. 363, with reference to Rabeau, *Le Village sous l'ancien régime.*)

From the Concordat to the separation of church from state, France has known the system of fabric-councils, which always included the mayor and parish priest with five or nine lay members appointed in the first instance by the bishop (in respect of the majority) and the prefect, and were subsequently recruited by co-option. The fabric-council met four times a year and its committee (parish priest and three members) once a month. The budget drawn up by it was approved by the bishop and in the last resort by the ministry with possible recourse to the state-council. In the United States of America the administration of parochial property was for long in the hands of lay trustees. The Second Council of Baltimore (1866) substituted for them the bishops who preside over the fabric-council of each parish and elect, with the vicar-general and parish priest, who are *ex officio* members of the said council, two laymen. The parishioners are kept informed by an annual statement of accounts (Third Council of Baltimore, 1884). In Germany the mediæval parochial assembly is again found (with the fabric-council) and the same system obtains in Switzerland. The Code allows a certain measure of lay participation in the administration of church property since it presumes in Canon 1521 §2 that laymen may have some share in such administration by virtue of a clause in the deed of foundation, or of the decree of erection, or further by desire of the Ordinary. In addition it adds that nevertheless everything must be done in the name of the Church and reserves the Ordinary's right of visitation, of requiring accounts and of prescribing the method of administration (cf. Canon 1183). This call on the laity has substantial advantages which were recognized before the Code. Twenty years ago, in speaking of Ireland, the

Abbé Trésal said "the Catholic unionists, and emigrants who have returned from America, are starting to claim some share in the administration of the parochial budget. Many laymen are anxious that every parish priest should go up into the pulpit annually and say to his parishioners 'You have given me so much; this is how I have spent it'; and that he should be assisted in temporal administration by a fabric-council which would sometimes have the courage to oppose him. They say that the clergy have everything to gain by bringing financial questions into the limelight and by seeking for this part of their charge the cordial and enlightened co-operation of independent Catholics—a co-operation which would be a pillar of strength for the pastor in the time of trial" (J. Trésal, *Enquête sur l'organisation d'une grande Eglise séparée de l'Etat*, Paris 1905).

This is the reason why, in France, since the separation, parochial councils with merely a consultative vote have often replaced the suppressed fabric-councils. In the diocese of Paris they are organized as follows: "A parochial council with a consultative vote in the temporal administration of the parish shall be established in every parish under the presidency of the parish priest.

"This council shall be composed of ten members in parishes which have more than five thousand souls, and of six members in smaller parishes.

"The Councillors shall be appointed by the Archbishop.

"The parochial council shall meet three times a year, in February, May and November and at any other time if necessary. At such meetings the councillors shall be kept informed on questions concerning the temporal administration of the parish. The parish priest shall select a treasurer and secretary from among his councillors (Articles 191 and 192 of the *Statuts synodaux du diocèse de Paris*, 1924)."

(3) *Functions exercised in the service of the Church or of the faithful*

In the present law co-operation of the laity in the life of the Church is provided for in the following ways:

(1) At divine worship, where they may be cantors or sacristans, and, as such, wear clerical dress either in church or outside while occupied in such employment (Canon 683).

(2) In legal proceedings and public acts where the duties of "apparitors" (court officers) are reserved for them (Canon 1592), and those of notary or advocate are accessible in default of clerics, with the exception of criminal cases in which ecclesiastics are concerned, and canonization and beatification processes as far as notaries are concerned (Canons 373 and 2017). For advocates and solicitors—cf. Canons 1637 and 1658.

(3) In the administration of ecclesiastical property or further, as advisers to the bishop or parish priest, they may have the office of treasurer or accountant.

(4) In teaching; for no part of the Code excludes them from teaching even theology or Canon Law, provided they have the necessary degrees; and for catechism the parish priest is invited, if need be, to secure the help of the laity and particularly of the Confraternity of Christian Doctrine (Canon 1333 §1).

(5) In any activities under the direction of the clergy.

(4) *General co-operation*

In addition to the particular instances given above, there is one important factor to be reckoned with. The laity do not play a merely passive part in the life of the Church—if they are not in command it by no means follows that they are quite inactive. Sertillanges explains

the rôle of the governed in the government of the Church as follows: "The active indwelling of God within us by grace is one of the fundamental dogmas of our faith. Now, if He is in us as He is in the hierarchy His communications cannot be here and there totally foreign to one another. That which He gives to the hierarchy comes to us, as a society, through authority. That which He gives to us goes up to authority by another route—by way of an influence which authority will judge, which it will make its own, in such a way that by the very fact that we are governed we are not governing; but this influence has to some extent its source in our midst—in one or more of us, separately or in one of our groups—private association, family or nation."

It is in this sense that it has been said "from the faithful especially comes the initiative, from the authorities the direction, control and check."

This is only partly true because the first step in the matter of salvation comes necessarily from Our Divine Saviour and from His representatives. By teaching—in so far as it contains what is, properly speaking, revealed by the ministry of the sacraments and by the general ordering of life—the hierarchy begins the work because Christ begins it and because God begins it. But in the course of the economy of salvation and with regard to its accompaniments, other beginnings may spring up on all sides since God is present everywhere, and while He observes the order established by Himself, He is in no way tied down to it.

"The grace of God, say the theologians, is not restricted to the sacraments. Let us understand the term 'sacrament' in the general sense which we have had more than once to recognize. Neither the sacrament of truth, which is doctrine, nor the sacrament of holiness, which is the ritual act, nor the sacrament of Christian activity, which is the exercise of government, exhaust

everything that God has willed to give to the organized totality of His faithful people. There are private truths, urges of sanctity which do not come from the ritual act; good directions taken which have not been commanded. God within us, the strength of creatures, as the liturgy calls Him (Rerum Deus tenax vigor), spreads His influence at every point where His living creation allows His presence to come to fruition.

"Nature is full of soul, said Aristotle of old. He was thinking in this expression of the drama of forest and meadow, where there is such abundance of eager and all-conquering life under the green tint which the painter puts on at a stroke of his brush! . . . Now in the religious activity of mankind life teems just as abundantly and for the very same reason. It is full of soul. The soul of the Holy Spirit permeates it, and we see, springing up on all sides a florison which does not emanate from the official sower nor from the forester, but comes directly from the immanent source of life which is poured out everywhere. Nor must we forget that this spontaneous life which springs from the innermost recesses of the soul, at the touch of the Spirit, needs to be controlled. In this we are distinguished from false mystics or Protestants, who reject authority and demand that there must be faith in God within them, that is to say faith in themselves. But what is controlled by authority has not been created by it for that purpose, and if, not having created it, authority makes use of it, we can say with truth that life has co-operated with authority" (A. D. Sertillanges, *L'Eglise*, Paris 1917, Vol. II, pp. 253-255).

CHAPTER IV

DUTIES OF THE LAITY

Obedience to the Church—Duties to one's neighbour—Duties with regard to faith—Duties towards the clergy and ecclesiastical authority—Religious duties.

(1) *Obedience to the Church*

THE Church and her governing authorities, i.e., the Pope and the Ordinaries, possess governing power of a legislative, judicial and coercive nature over the faithful. They have the power generally to govern because it was said, not to peoples and princes, but to the Apostles and their successors "As my Father has sent me, so also do I send you" (John xx, 21). "All power is given to me in Heaven and in earth. Going, therefore, teach ye all nations: baptizing them in the name of the Father, and of the Son, and of the Holy Ghost" (Matt. xxviii, 18-20). "Take heed to yourselves and to the whole flock wherein the Holy Ghost hath placed you bishops to rule the Church of God . . ." (St. Paul at Miletus to the elders of Ephesus, Acts xx, 28). In speaking of the hierarchy we have said all that constituted the authority of the Apostles, the twelve and St. Paul, over their churches.

The legislative authority of the Church is the result of the power of binding and loosing given to Peter and to the twelve (Matt. xvi, 19; xviii, 18), of the command to teach all nations Christ's commandments (ibid., xxviii, 20), and of the Apostolic practice (cf. especially the

decree of the Council of Jerusalem "It hath seemed good to the Holy Ghost and to us" (Acts xv, 19).

The judicial power and the coercive power connected therewith depend particularly on the following texts: "But if thy brother shall offend against thee, go and rebuke him between thee and him alone. If he shall hear thee, thou shalt gain thy brother. And if he will not hear thee: take with thee one or two more, that in the mouth of two or three witnesses every word may stand. And if he will not hear them, tell the church. And if he will not hear the church, let him be to thee as the heathen and publican" (Matt. xviii, 15, 16, 17). "I indeed, absent in body but present in spirit, have already judged, as though I were present, him that hath so done (an incestuous man belonging to the Church at Corinth), in the name of our Lord Jesus Christ, you being gathered together and my spirit, with the power of our Lord Jesus; to deliver such a one to Satan for the destruction of the flesh, that the spirit may be saved in the day of our Lord Jesus Christ" (I Cor. v, 3-5).

"Therefore I write these things, being absent, that, being present, I may not deal more severely, according to the power which the Lord hath given me unto edification and not unto destruction" (II Cor. xiii, 10); (cf. J. V. Bainvel, *De Ecclesia Christi*, Paris, 1925, pp. 123 and 127).

Submission to the Church in Social and Political Activities

A distinction must here be made between works whose object is directly religious and other works: in the first case there must be strict subordination of the faithful to ecclesiastical authority; in the second case the real independence which they enjoy does not entirely withdraw them from the Church's control.

All works which directly assist the spiritual and

pastoral ministry of the church, and which consequently have a religious object aimed directly at the good of souls, must in their details be subordinated to the authority of the Church and thus equally to the control of the bishops instituted by the Holy Ghost to govern the Church of God in the dioceses assigned to them.

But even other works which, as we have said, are founded principally to restore and promote in Christ true Christian civilization and which, in the sense explained above, constitute Catholic activity, can in no way be conceived of as independent of the counsel and high direction of ecclesiastical authority, the more so because they must all conform to the principles of Christian doctrine and morals, and because it is still less possible to conceive of them as being opposed more or less openly to this very authority.

"It is certain that such works, granted their nature, must be carried on with the freedom which is reasonably suited to them since it is upon themselves that responsibility for their own acts falls, especially in temporal and economic as well as in public affairs be they administrative or political, all of which are matters foreign to the purely spiritual ministry. But since Catholics always carry the standard of Christ, by that very fact they bear the banner of the Church; and it is reasonable that they should receive it at the hands of the Church, that the Church should watch jealously that her honour be never sullied and that Catholics should submit like docile and affectionate children to this motherly vigilance" (Pius X, *Il fermo proposito*, Encyclical of 15th June, 1905).

(2) *Duties towards one's neighbour*

The Code of Canon Law recalls to mind that the primary end of marriage is the procreation and education of children (Canon 1013) and that parents have a

very serious obligation to give their children education, moral and religious, physical and civic, and to provide for their temporal welfare (Canon 1131). It teaches that desire for the religious life does not exempt from this duty, so much so that parents cannot be admitted to novitiate without whom children would run the risk of being neither fed nor brought up, as well as children whose father and mother or grandfather and grandmother are in a state of grave necessity (Canon 542 (2)). We have seen that the Code also insists on the duties of justice and charity on the part of employers with regard to their employees in connexion with the administration of ecclesiastical property (Canon 1524). Finally, Title XIV of Book V of the Code lays down severe sanctions against the most serious crimes against the life, liberty, property and honour of one's neighbour and against good morals.

(3) *Duties with regard to the faith*

All Catholics must believe everything that the Church teaches as being revealed by God, whether such teaching is the result of a solemn definition by the Pope or oecumenical council (extraordinary magisterium) or whether it emanates from the Ordinary and universal magisterium, that is to say, from the unanimous consent of the universal Church on a point of doctrine; but for such teaching to be of obligation it must be manifest (Canon 1323). There is also an obligation to eschew, in addition to heresies, formal and obstinate denial of the revelation thus proposed by the ecclesiastical magisterium and errors which approach it in a greater or less degree (Canons 1324 and 1325). Finally, the faithful are bound openly to profess their faith as often as silence, equivocation, or some subterfuge would imply its denial, or would be an insult to God or a scandal to one's neighbour (Canon 1325).

Connected with the duty of faith is the duty of parents to ensure for their children a Christian education (Canon 1372) and to carry out the directions of Ordinaries concerning the sending of their children to non-Catholic schools whether undenominational or not (Canon 1374). All the faithful are bound to respect the right of supervision which Ordinaries have over all schools in matters pertaining to faith and morals (Canon 1381), and it would be a sin of omission not to help, as far as one's means allow, the establishing and maintenance of Catholic schools (Canon 1379 §3).

The Code also attaches to the whole of the duties imposed by faith a prohibition to publish, read, keep, sell, translate, communicate to another under any form whatever (even by word of mouth), publications condemned by the Holy See or the Ordinaries (Canon 1395 and 1398).

(4) *Duties towards the clergy and the ecclesiastical authorities*

The laity must show respect for the clergy and their immunities (Canon 119, etc.). They are forbidden to wear clerical dress (Canon 683), to preach in churches, and to be arbiters in ecclesiastical proceedings (Canon 1931). Their unlawful interference in ecclesiastical elections, and all crimes against ecclesiastical authorities, persons and things are strictly forbidden and visited with severe sanctions (Canon 166, Title XIII of crimes against ecclesiastical authorities, persons and things; Title XV on the crime of forgery—Code, Book V on Crimes and Punishments). Finally, the Church has the right, independently of the civil power, to demand from the faithful the resources necessary for the upkeep of worship and the ministers thereof (Canon 1496). On the subject of "denier de culte," the Cardinal Secretary of State wrote as follows to the French bishops on the 8th October, 1907:

"The Holy Father recognizes the necessity of the organization; at the same time he maintains that in such a matter one should proceed with the greatest delicacy by avoiding absolutely everything which might savour of importunity or taxation."

It is no derogation from this that in the marriages and funerals of contributors to the work of the "denier de culte" additional honours are shown to them, i.e., the pomp according to which such ceremonies are graded (in France).

(5) *Religious duties*

The Code has added some details to the old commandments of the Church.

The holidays of obligation to be observed at common law are reduced to Christmas, the Circumcision, the Epiphany, Ascension Day, Corpus Christi, the Immaculate Conception, the Assumption, St. Joseph, SS. Peter and Paul and All Saints. Further, in the case of lawful suppression or translation of one of these holidays no innovation must be made without consulting the Holy See. Lawful custom or indult can allow a certain amount of trade on Sundays and holidays of obligation (Canon 1248). The precept of attendance at Mass can be fulfilled in all churches except private oratories apart from indult (Canon 1249).

On arrival at the age of discretion, which is the same as the age of reason (presumed after seven years, to be proved before then), a person must confess all his mortal sins at least once a year (Canons 906 and 907). In the same circumstances of age there is an obligation to receive Holy Communion at least once a year during Paschal time, which runs from Palm Sunday to Low Sunday and may be extended by Ordinaries from the fourth Sunday of Lent to Trinity Sunday unless the confessor

thinks it may suitably be postponed to some later time. It is merely a matter of counsel—not of precept—to makes one's Easter duty in one's own parish church (Canon 859).

There is an obligation to abstain every Friday, to fast and abstain on Ash Wednesday, the Fridays and Saturdays of Lent (Wednesdays and Saturdays by special indult in many dioceses), Ember Days, and the vigils of Pentecost, the Assumption, All Saints, and Christmas, and to fast every day in Lent. This law does not apply to Sundays and holidays of obligation. If a vigil falls on a Sunday or holiday of obligation there is no fast and abstinence on the preceding day. Whole countries, and in particular Spain, enjoy wide privileges in this respect.

BIBLIOGRAPHY

The young canonist who desires to make a thorough study of some of the questions which have only been touched on in this rapid sketch would be well advised: (1) In the first place to consult some good bibliographical collections, e.g., the very abundant references given by J. B. Sagmüler in his *Lehrbuch des Katholischen Kirchenrechts* (Fribourg-in-Bresgau, 1914—a new edition is in course of preparation). A methodical and exhaustive bibliography of works (books and articles) which have appeared on ecclesiastical institutions since 1900 is to be found in *La Revue d'histoire ecclésiastique of Louvain* whose reviews are also worth consulting.

The *Archiv fûr Katolischen Kirchenrecht* which has been going on since 1857 and has for long been directed by Vering is also invaluable. Reference can also be made to the tables and reviews of the *Canoniste contemporain* (1878-1920, 1924-1926), the *Revue du Clergé Français*, the *Ami du Clergé* and the *Revue Apologétique*.

(2) All serious study of Canon Law must start with direct reference to the texts; councils and pontifical institutions. Two general collections are available at the outset for the period prior to the Code.

(a) The *Corpus Juris Canonici* has two parts: the Decretal published by Gratian at Bologna about 1145, which is the work of a private individual but which has had in fact the authority and influence of an official collection; it contains a large number of ancient canonical texts; the Pontifical Constitutions, i.e., the Decretals of Gregory IX (1234), the Sext of Boniface VIII (1298),

the Clementines (of Clement V published by John XXII), the Extravagantes of John XXII, and the Extravagantes Communes (1484); the Extravagantes are texts which go beyond the official collections and which ecclesiastical authority has not itself gathered together. The leading edition of the Corpus is that of Friedberg (Leipzig 1879-1881) since it gives a text which has been critically established, contains the suppressed portions of the Decretals (*partes decisae*)—often necessary to put them in their proper setting, and finally, sources and doubtful documents are specially noted. But it is also interesting to study the Corpus with the glosses of the Canonists (*Corpus Juris Canonici cum glossa*, Venice 1577).

(b) The *Codicis Juris Canonici fontes cura Emi Petri, Card. Gasparri, editae*—the sources of the Code of Canon Law, edited by Cardinal Gasparri, Rome, 1922-26 containing, up to the present, Papal Constitutions from the beginning to 1917, Oecumenical Councils, Decrees of the Holy Office and of the old Congregation for Bishops and Regulars. The texts of the Corpus Juris have been laid aside. The documents are edited in chronological order, but the notes in the complete edition of the Code (1917) make it easy to find the texts which refer to each canonical institution, for these notes merely refer to the sources.

These two great collections are not sufficient. Something must be said about (1) the early canonical manuals; (2) Fathers of the Church; (3) Councils; (4) Pontifical Constitutions as a whole and (5) the Acts of the Roman Congregations.

From the end of the first century various private collections of disciplinary regulations appeared, in particular between 80 and 100 the *Teaching of the Apostles*, and round about 400 the *Apostolic Constitutions* and the *Canons of the Apostles*. The German Professor Fonck has produced good editions of these.

The Greek and Latin Fathers were edited by Migne

from 1844-66. He reproduced the Benedictine editions which marked considerable progress in the seventeenth and eighteenth centuries, but are no longer in point (Migne, P.G.—*Greek Fathers*; Migne, P.L.—*Latin Fathers*). The Berlin Academy has begun a critical edition of the *Greek Fathers*, the Academy of Vienna having previously undertaken the same task for the *Latin Fathers*. A certain number of interesting texts have been published under the direction of Messieurs Hemmer and Lejay, since 1907. (*Textes et documents pour l'étude historique du christianisme*, Paris, Picard. Text, translation and notes.) Unfortunately this collection has not been continued after the war.

The most complete collection of the Councils is that of Mansi (Florence and Vienna 1750-1798); it goes only as far as 1439 and is very imperfect from the critical standpoint. The Councils of the last three centuries (1682-1870) have been gathered together by the Maria-Laach Jesuits (*Collectio Lacensis*). Hermann Bruns produced at Berlin in 1839 a critical edition of the Councils of the first seven centuries which, despite its undoubted value, needs revision (*Canones apostolorum et conciliorum, saeculorum* IV, V, VI and VII). The selection of old Councils by Fr. Lauchert (*Die Canones der wichtigsten Altkirchlichen Concilien*, Fribourg-in-Bresgau 1896, Mohr). Lastly the *Monumenta Germaniæ Historica* includes good editions of the Merovingian (Maasen) and Carolingian Councils.

The pontifical acts have been published in the various Roman *Bullaria* which from the critical point of view are all mediocre productions. That of Coquelines (Rome 1739-1744, continued in 1843 at Prato) is the least objectionable. For the first centuries there is the edition of Thiel (1868) and for the first twelve centuries the *regesta* of Jaffé-Potthast 1874-1875 (extracts and summaries). The students of the French school at Rome have published several registers (*regesta*) of the Acts of the

Popes in the thirteenth and fourteenth centuries. As for the *Bullarium of Benedict XIV* only the first volume is an official edition. There are private collections and official collections of the decisions of the Roman Congregations. Among the latter may be cited those of the *Congregation of Indulgences* (1883), *Propaganda* (1907), *Rites* (Six volumes in 1912).

The collection of Concordats by Monsignor Mercati (*Raccolta di Concordati*, Rome, 1919) is also noteworthy. As a subsidiary source the Civil Law which has at times exercised a great influence on the Canon Law must be studied, especially the *Codes of Theodosius and Justinian* (edited by Mommsen) and the capitularies of the Carolingians ("Leges" by Pertz in the *Monumenta Germaniæ Historica*).

For the Code itself there are available for consultation the replies of the Commission for the interpretation of the Code published in the *Acta Apostolicæ Sedis*—the official publication of the Holy See since 1909 (M. Cimetier has just published a selection from it: *Pour étudier le Code de droit canonique*, Paris, 1927), the Acts of the Sovereign Pontiff and of the Roman Congregations given by the *Acta*, and the decisions of the tribunal of the *Rota*, of which a new collection already extending to several volumes is in course of publication.

(3) The theory of Canon Law must not be studied solely in the authors who have written since 1917; they have been able to produce only manuals (e.g. A. Vermeersch and J. Creusen, *Epitome Juris Canonici*, three volumes, Malines, 1921-1923, which is clear and exact; Adrien Cance, *Le Code de droit canonique*, Vol. I, Paris 1927, which augurs well for the two succeeding volumes already announced), or to begin developed commentaries. (A re-edition of the *Jus Canonicum of Wernz* by Vidal includes only Vol. II *De Personis*, and Vol V *Jus Matrimoniale* and *De Processibus*. *Institutiones Juris*

Canonici by Maroto, Madrid and Rome 1919, which goes up to Canon 245 of the Code.) It is absolutely essential, making of course the necessary adjustments to the new legislation, to refer to the great pre-Code Canonical treatises: Wernz, S.J., *Jus Decretalium* 1912-1915, Philipps *Kirchenrecht*, Ratisbon 1845-1857. It is also necessary to consult the great canonists of by-gone ages: Benedict XIV (†1758) *De synodo diocesana*, Schmalzgrueber (*Jus ecclesiasticum universum*), Ingolstadt (1726), Reiffenstuel (*Jus ecclesiasticum universum* 1743), Barbosa (*Juris ecclesiastici universi libri tres*, Lyons 1698-1716), Fagnan (*Commentaire des Décrétales*, Rome 1661).

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Two fascicules of a *Dictionnaire de droit canonique* directed by A. Villien and E. Magnin (subsequently by A. Amanien) appeared in 1924 and 1926 in Paris (Abbas—Anathèmes).

(4) For the history of canonical institutions *L'Ancienne et nouvelle discipline de l'Eglise*, by Louis Thomassin of the Oratory still remains the standard work, although published as far back as 1679 (at first in French, then translated into Latin by the author himself at the request of Pope Innocent XI). But as history has progressed somewhat since the seventeenth century, Thomassin requires to be supplemented by the following authors:

Paul Hinschius, *System des Catholischen Kirchenrechts* (six volumes published at Berlin from 1869-1897 with a detailed index at the end of Vol. IV); Rudolp Sohm *Kirchenrecht* (two volumes reprinted at Leipzic in 1923): these two authors carry an immense weight of information but judge Catholic institutions from a purely Protestant view (and especially Liberal Protestant in the case of Sohm); Paul Viollet, *Histoire des institutions politiques et administratives de la France* (three volumes, Paris 1896-1903); Emile Chénon, *Histoire générale du droit français publique et privé* (Vol. I, Paris 1926. A second vo-

lume is announced). Viollet and Chénon were both outstanding Catholics. A. Esmein, *Cours élémentaire d'histoire du droit français*, fourteenth edition by R. Génestal (Paris 1921)—the work of authors who do not appear to be Catholics but make an effort to understand the Church and derive their information from the sources themselves.

(5) The special bibliography of the subject with which we are dealing affords few works which are of value and to the point; there is hardly one worthy of note except:

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